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M I N U T E S  
LAND USE COMMITTEE  
Council of the County of Maui  
Council Chamber  
November 1, 2007

APPROVED:  
  
Committee Chair

1       **RECONVENE:**     1:33 p.m.

2       **PRESENT:**     Councilmember Michael J. Molina, Chair  
3                     Councilmember Joseph Pontanilla, Vice-Chair  
4                     Councilmember Michelle Anderson, Member  
                      (arrive 1:48 p.m.)  
5                     Councilmember G. Riki Hokama, Member  
                      (arrive 3:40 p.m.)  
6                     Councilmember Jo Anne Johnson, Member  
7                     Councilmember Danny A. Mateo, Member  
8                     Councilmember Bill Kauakea Medeiros, Member  
9                     Councilmember Michael P. Victorino, Member

10       **EXCUSED:**    Councilmember Gladys C. Baisa, Member

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

13       **ADMIN.:**     Colleen Suyama, Deputy Director, Department  
                      of Planning  
14                     Michael J. Hopper, Deputy Corporation  
15                     Counsel, Department of the Corporation  
16                     Counsel

17       **OTHERS:**    Charles Jencks, Owner's Representative,  
                      Honua'ula Partners, LLC  
18                     Steven J. Goodfellow, Goodfellow Bros., Inc.  
19                     Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc.  
                      (Applicant's entitlement consultant)  
20                     B. Martin Luna, Esq., Carlsmith Ball, LLC  
                      (Applicant's attorney)  
21                     Joyclynn Costa  
22                     Kimokeo Kapahulehua  
23                     Stephen West  
24                     Additional attendees (10)

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

.....  
26       **ITEM NO. 38:   CHANGE IN ZONING AND PROJECT DISTRICT**

27                     **PHASE I APPROVAL FOR "HONUUA'ULA/WAILEA 670"**

28                     **RESIDENTIAL DEVELOPMENT (C.C. No. 01-334)**

29       **CHAIR MOLINA:**  (*Gavel.*)  The recessed Land Use Committee  
30                     meeting of October 18th, 2007, is now back in

1 session.

2 Today is Thursday, November 1st, 1:33 p.m.

3 Members, we have a couple of more conditions  
4 to address, so we're moving, we're making progress.  
5 Today the Chair has been informed that we have  
6 quorum up till 5:30 p.m. today, so that is how far  
7 we will go.

8 For the record, in attendance we have Members  
9 Mateo, Johnson, Medeiros, Pontanilla, Victorino, and  
10 Molina. Excused are Members Anderson, Baisa, and  
11 Hokama. From the Committee Staff we have Committee  
12 Analyst Carla Nakata; Committee Secretary  
13 Tammy Frias. And then we have Mr. Mike Hopper from  
14 the Corporation Counsel's office. And from the  
15 Planning Department we have Deputy Director  
16 Colleen Suyama.

17 Members, we last left off considering a  
18 proposed amendment for Condition 16 and 17, in  
19 essence replacing those two conditions with a  
20 proposed amendment from Member Anderson. Member  
21 Anderson, I'm sure, will be joining us shortly.

22 What the Chair would like to do right now is  
23 go -- for the time being, let's go to Condition 11,  
24 which has to do with the Little League condition.  
25 On your matrix, you'll find the condition -- just

1           look for 11 under Maui Planning condition (sic), 7  
2           or 8, I believe -- 7, Page 7, Members.

3           COUNCILMEMBER VICTORINO: Thank you.

4           CHAIR MOLINA: Are there any other considerations for 11?

5                    I believe Member Pontanilla initially had a  
6           proposed amendment at our last meeting but withdrew  
7           that consideration. We're looking at the updated  
8           condition, in the fourth column, from the Planning  
9           Department.

10                   Chair would like to take action on this  
11           condition to move it forward. If there are no  
12           objections, Chair will ask for a motion to move on  
13           Condition 11.

14           COUNCILMEMBER VICTORINO: So moved.

15           MS. NAKATA: Excuse me, Mr. Chair.

16           CHAIR MOLINA: Yes, Staff?

17           MS. NAKATA: There's a motion to amend already pending,  
18           left with the Committee at its last meeting.

19           CHAIR MOLINA: Is that in violation of protocol if we act  
20           on something else?

21           MS. NAKATA: We shouldn't have two subsidiary motions  
22           pending at the same time.

23           CHAIR MOLINA: And is that according to Robert's Rules?

24                    Okay. Members, Staff has informed us that  
25           because we were -- when we last left our meeting we

1           had a motion on the floor related to the proposed  
2           amendment of Condition 16 or 17, or the replacement  
3           of those two conditions.

4           COUNCILMEMBER JOHNSON: Oh, no, she withdrew.

5           CHAIR MOLINA: That's the sewage --

6           COUNCILMEMBER JOHNSON: Oh.

7           CHAIR MOLINA: Yeah, the proposal. Yeah, I think she  
8           withdrew her -- that was related to the cultural --  
9           yeah -- conservation, yeah, yeah.

10                   All right. Well -- so, what can we then  
11           discuss, then, Staff, in the meantime?

12           COUNCILMEMBER JOHNSON: Oh, boy.

13           CHAIR MOLINA: We can still discuss another condition?

14                   Discuss, but no actual --

15           MS. NAKATA: I guess you could go on a consensus basis.

16           CHAIR MOLINA: Okay. How about that, Members, okay, as an  
17           alternative?

18                   Let's consider it just a -- we'll have  
19           general consensus for Condition 11, then.

20           COUNCILMEMBER VICTORINO: Consensus.

21           CHAIR MOLINA: Okay. Member Johnson?

22           COUNCILMEMBER JOHNSON: Yes, and I just -- because I -- I  
23           wasn't able to determine -- in fact, I had put in a  
24           call to one of my realtor friends, but because they  
25           didn't have enough information, I really wasn't able

1 to determine whether the \$5 million was reasonable,  
2 not reasonable, because a lot depended on the exact  
3 location of where the land is and its proximity to  
4 existing, I guess, infrastructure. So, that -- I  
5 apologize, but I was not able to get any better  
6 information than what's there. And my only comment  
7 would be, based on current construction cost  
8 estimates for the Little League field, approximately  
9 \$5 million shall be paid to the County.

10 Could we change that to say a minimum of \$5  
11 million?

12 Because if it is -- if it is more than that,  
13 if -- you know, through whatever -- because we don't  
14 know what all the costs -- and I know Mr. Matsui  
15 just was pulling figures out of the air. But I  
16 would just say a minimum of \$5 million shall be paid  
17 to the County.

18 CHAIR MOLINA: So, you would like to take out the word  
19 "approximately"?

20 COUNCILMEMBER JOHNSON: Yeah, and just say, like,  
21 "minimum."

22 CHAIR MOLINA: "Minimum"?

23 Members, comments?

24 Or can I call the Applicant up to just get  
25 his comments, as well.

1                   And I think you bring up a good point, the  
2                   cost of construction and, you know, we don't know  
3                   what the future will hold.

4                   Mr. Jencks?

5           MR. JENCKS: Thank you, Mr. Chair.

6                   Good afternoon, everyone. We had a pleasant  
7                   evening last night.

8                   No?

9           CHAIR MOLINA: You're scaring too many people.

10           MR. JENCKS: Relative to the issue of land value and cost  
11                   to construct, I sent a letter to the Committee dated  
12                   August 14th, 2007, and let me just go through that  
13                   very quickly for you. The parcel in question is the  
14                   6.184 acre parcel, that's a part of that condition,  
15                   located immediately adjacent to the Piilani Highway  
16                   corridor running through the project for a Little  
17                   League facility. Now, what I did was, I went and I  
18                   talked to an appraiser about the value of land that  
19                   is not served by utilities, that is park land, and I  
20                   upped that value to \$12 a square foot for just the  
21                   land for the 6.184 acres, \$12 a square foot for the  
22                   raw land. You know, unsubdivided, not served by  
23                   utilities, that's what it is. And then for the  
24                   improvements, what I did was I took \$6 per square  
25                   foot. Now, this is for a Little League facility

1           that would cover maybe, at the most, an acre and a  
2           half of land, but this is the 6.1 -- 6.184 acre  
3           parcel. I took the \$6 per square foot over the  
4           entire property, so that gives you more than enough  
5           money, in my opinion, based upon current  
6           construction, to replace this facility or build a  
7           facility. So, a total of 5 million is what I came  
8           up with based upon those two factors.

9           COUNCILMEMBER JOHNSON: And, Mr. Chair, I wanted to thank  
10           Staff, also, for showing me, because our binders are  
11           so full of materials that I hadn't realized that we  
12           had gotten that calculation. So, you know, I think  
13           that that also helped me to understand how that  
14           figure was derived at.

15                         Do you have any objection, though, to just  
16           putting in the minimum of 5 million?

17                         I mean, if you're so gracious --

18           MR. JENCKS: I consider myself gracious.

19           COUNCILMEMBER JOHNSON: -- to provide more.

20           MR. JENCKS: Well, it's based upon land value and cost to  
21           construct. And, if anything, Council Member, you're  
22           probably going to find that some costs to construct  
23           are going to go down in the near future. So, you  
24           can recommend what you like. This is a really good  
25           number based upon gross acreage and gross square

1           footage, so I think it gives you a really good  
2           value.

3           COUNCILMEMBER JOHNSON: Okay. Thank you.

4           CHAIR MOLINA: Member Johnson, do you still want to  
5           incorporate --

6           COUNCILMEMBER JOHNSON: Yes, I still would propose that.

7           And the only reason is because when you -- whenever  
8           you use ambiguities like approximately 5 million, I  
9           would just say a minimum of 5 million. I mean, it  
10          may end up being 5 million exactly, but that would  
11          be the minimum.

12          CHAIR MOLINA: Okay. Members, any objections to replacing  
13          the word "approximately" with "a minimum of"?

14          COUNCILMEMBER MATEO: Chairman?

15          CHAIR MOLINA: Yes, Mr. Mateo?

16          COUNCILMEMBER MATEO: Chairman, if I could, I'd like to  
17          ask Planning how they -- before you, you know, ask  
18          for a consensus.

19          CHAIR MOLINA: Okay.

20          COUNCILMEMBER MATEO: Planning, if you can tell us how  
21          you -- how you stood on that 3,473,332 figure.

22          MS. SUYAMA: The 3,470,000-dollar figure was the original  
23          that came in during 2000, which was proposed by the  
24          Applicant. The 5 million is the more recent  
25          estimate of what the value of the land and the

1 construction cost would be based upon current  
2 construction valuations.

3 The Department would suggest, to be very  
4 clear on this condition, that you amend it to read  
5 that, and based on current land and construction  
6 cost estimates for the Little League field but not  
7 less than \$5 million. That means, if the value is  
8 less, then you still get the \$5 million for the  
9 project -- I mean, for the relocation or the  
10 elimination of the Little League field. I think  
11 that's very clear, but not less than that amount.  
12 If it turns out that the estimates are greater at  
13 the time, then they would pay the higher value. But  
14 at least \$5 million would be given to the County of  
15 Maui for the south Maui park.

16 The other thing that I wanted to point out is  
17 that when Parks was reviewing this condition, they  
18 wanted to make sure that it was clear that this  
19 dedication of the \$5 million would not be for the  
20 requirement of park assessment based upon the  
21 subdivision ordinance or Chapter 18.16.320. So,  
22 they wanted to make sure that that is the  
23 understanding, is that this is above what they would  
24 be required to provide as part of the subdivision  
25 ordinance.

1 COUNCILMEMBER MATEO: Okay. Thank you.

2 Thank you, Chairman.

3 And I guess the verbiage that was shared  
4 by -- with -- with us by Ms. Suyama, I think that  
5 might suffice. But I think that was a good  
6 explanation on terms or expectation in regards to  
7 the 5 million by the developer.

8 CHAIR MOLINA: Okay. Thank you, Mr. Mateo.

9 Member Johnson, would you be --

10 COUNCILMEMBER JOHNSON: Yes. In fact, I think if Staff  
11 got that, that is fine. And then, also, I had  
12 forgotten that we did need to clarify what Parks had  
13 requested, that this was not counting towards their  
14 park assessment.

15 CHAIR MOLINA: Right. And I believe we did incorporate a  
16 condition at our last meeting to emphasize this is  
17 not -- will not satisfy their --

18 COUNCILMEMBER JOHNSON: And because we don't -- you know,  
19 we keep going through these different, I guess,  
20 phases of our conditions. As long as those two  
21 things are contained within it, I have no problem  
22 myself moving this forward.

23 CHAIR MOLINA: Okay. Staff, do you need the language  
24 repeated or have you got it down?

25 Okay. Members, so, we shall -- by consensus

1           we'll accept the adjustments to the condition.

2           Mr. Pontanilla?

3 VICE-CHAIR PONTANILLA: Thank you.

4           I just was going to add that I think when we  
5           last met we removed the word "approximately."

6 CHAIR MOLINA: You mean, when we last met the word  
7           "approximately" was removed?

8 VICE-CHAIR PONTANILLA: Yeah. But I can live with that  
9           language that --

10 CHAIR MOLINA: But I think with today's incorporation  
11           we're going to take that word out.

12           Okay. So, the word "approximately" will be  
13           removed from the condition.

14           Mr. Hopper?

15 MR. HOPPER: I'm sorry, Mr. Chair, where was it that you  
16           stated that the -- that this contribution would not  
17           be in satisfaction of the fees?

18           I know we dealt with that as far as a  
19           two-acre park, saying that it would be in  
20           satisfaction. Maybe I wasn't here.

21           But what condition did you deal with where  
22           you said --

23 CHAIR MOLINA: We dealt with the condition that was  
24           submitted to us from Parks. I believe --

25           Staff, was that in relation to this Little

1 League field or was it --

2 MS. NAKATA: I think what Ms. Suyama was referring to is  
3 the deletion of the phrase that said amount shall be  
4 credited against future park assessments from the  
5 Maui Planning Commission version of the condition.  
6 So, that deletion is incorporated in the Planning's  
7 July 27th version.

8 MR. HOPPER: The key, I think, that Mr. Matsui was talking  
9 about was that there was a condition in some other  
10 project which just said there's going to be a  
11 monetary contribution; it didn't say if it was or it  
12 wasn't going to count against. Many years later the  
13 developer made the argument that it was intended to  
14 be counted against. If it's clear that that's not  
15 the intention here -- I know that you erased -- or  
16 you deleted the language "shall be credited against  
17 future park assessments," but it -- yeah, you  
18 could -- you could put the opposite and say said  
19 amount shall not be credited against any future park  
20 assessments required by 18.16.320, or language to  
21 that effect.

22 CHAIR MOLINA: To add more specific -- specificity to it.

23 MR. HOPPER: If that's your intention.

24 CHAIR MOLINA: Okay. Members, any -- any -- any concerns  
25 with regard to adding that language, shall not be

1 credited?

2 COUNCILMEMBER JOHNSON: No.

3 CHAIR MOLINA: Do we have consensus for that?

4 COUNCILMEMBER JOHNSON: Yep.

5 CHAIR MOLINA: Okay. Staff --

6 VICE-CHAIR PONTANILLA: Chair?

7 CHAIR MOLINA: Sorry.

8 Yes?

9 VICE-CHAIR PONTANILLA: Can you read the condition?

10 CHAIR MOLINA: Yeah, we'll have Staff, when she's ready.

11 Maybe you guys might need to provide some  
12 assistance. I know this has morphed into something  
13 a little larger than --

14 MS. NAKATA: I believe where we're at right now is, In  
15 lieu of the dedication of the Little League field  
16 and related amenities as originally specified in  
17 Ordinance Number 2171 (1992) Exhibit B, Condition  
18 Number 8, and based on current land and construction  
19 cost estimates for the Little League field but not  
20 less than \$5 million shall be paid to the County.  
21 Said amount shall be credited against future park  
22 assessments upon -- excuse me. Said amount shall  
23 not be credited against future park assessments upon  
24 Phase II project district approval for the  
25 development of the South Maui Community Park.

1 CHAIR MOLINA: Members, is that clear to you?

2 Okay. Do we have consensus to move it on?

3 COUNCIL MEMBERS: No objections.

4 **COUNCIL MEMBERS VOICED NO OBJECTIONS** (excused: MA, GB,  
5 RH)

6 CHAIR MOLINA: Okay. Thank you very much, Members.

7 Condition 11 has moved on.

8 Members, we're considering removing Condition  
9 16 and 17. While we wait, Member Anderson -- I know  
10 she was here earlier so -- oh, there she is.

11 Let's move on to Condition 16 and 17, Page 9  
12 of your matrix. What's up for consideration is the  
13 removal of these two conditions. We had Mr. Taylor  
14 from the Wastewater Division here with us at our  
15 last meeting sharing his concerns.

16 The Chair is also going to consider some  
17 additional language should there be some concerns  
18 with regards to the condition proposed by Member  
19 Anderson. But -- did anyone -- before I go to  
20 Member Anderson I'll ask if there's anyone that has  
21 comments on her proposed condition.

22 Members, you should have it. I believe it  
23 was distributed at our last meeting.

24 Sorry?

25 It's in the binder, as well, that's right.

1           Our eighth binders, Members. That's the thin  
2           evident one at this point. I guess it's --

3                   Committee secretary, about how far in or out  
4           is this amendment, just so we know where we're at?  
5           Is it right here?

6   COUNCILMEMBER MEDEIROS: Chair?

7   CHAIR MOLINA: Yes, Mr. Medeiros?

8   COUNCILMEMBER MEDEIROS: Is this the sewage disposal --

9   CHAIR MOLINA: Yes, it's the Sewage Disposal Analysis  
10           condition.

11                   Additional comments from the body before we  
12           go back to Member Anderson?

13                   The Chair has some questions regarding the  
14           second portion of the proposed amendment. Maybe --  
15           I don't know if Corporation Counsel can answer it at  
16           this time. The portion where it says, The Sewage  
17           Disposal Analysis, along with reviews and comments,  
18           shall be submitted to the Council for review and  
19           projects shall be subject to additional conditions  
20           or amendments by Council if warranted by sewage  
21           analysis.

22                   For the Chair, it just brings up some issues  
23           as far as if it's warranted by -- you know, in this  
24           analysis as far as the -- I'm just trying to get my  
25           bearings here.

1           If it's found that it's warranted that there  
2           are some issues which relates to sewage disposal,  
3           would it then trigger the Applicant having to come  
4           back to the Council for rezoning and, you know, any  
5           other related issues?

6           Because -- maybe it's me, but it just -- I  
7           just have some questions on that.

8           What would it then trigger? Would,  
9           basically, the Applicant have to go through the  
10          whole process again, based on comments from these  
11          agencies?

12         COUNCILMEMBER ANDERSON: That's not what the condition  
13          says, Mr. Chair. The condition -- the condition  
14          says --

15         CHAIR MOLINA: No, but I'm asking if -- it just brings up  
16          for -- I know the condition doesn't say that, but  
17          I'm just wondering if -- if we follow this  
18          condition, would it trigger that; that's what -- I'm  
19          not saying that it says that.

20         COUNCILMEMBER ANDERSON: Rezoning?

21         CHAIR MOLINA: Yeah, zoning or -- does the Applicant have  
22          to go through the whole process again?

23         MR. HOPPER: I mean, what you're doing, you're putting  
24          another, basically, tier of review into the process  
25          before Phase II where it wouldn't otherwise be

1           there. It does not -- the intention clearly does  
2           not appear to be to create a situation where the  
3           rezoning application is completely followed. It  
4           looks like it's a separate Council review process  
5           that requires review and has a standard, if  
6           warranted by the Sewage Disposal Analysis,  
7           additional conditions or amendments can be -- can be  
8           made, which is -- it seems a bit different, to me,  
9           because it's not sort of a part of the project  
10          district approval as contemplated by your ordinance.

11                       Now, I would say, that if you are  
12          dissatisfied with the Sewage Disposal Analysis at  
13          this point, you would have the right to request that  
14          that additional information be provided based on the  
15          fact that you do not believe the information  
16          provided is adequate. Or if you believe, for  
17          whatever reason, the Applicant did not provide you  
18          all the information required by their application,  
19          if as a body you do not feel comfortable voting  
20          based on the information you have, you can request  
21          more information and withhold action until then.  
22          That would be perhaps, be more advisable than  
23          creating another tier of review, so to speak, that  
24          would require -- this would require by its terms  
25          Council review and presumably -- not expressly

1           stated any approval, but it would require the  
2           Council to review and propose additional conditions  
3           if warranted by the analysis. It would be -- if  
4           such an extra phase, really, in the project district  
5           approval is contemplated, it would perhaps be a good  
6           idea to be a bit more specific as to the criteria by  
7           which they would be reviewed and -- you know. See,  
8           at this point, right now, you do have the authority  
9           to recommend conditions based on the information you  
10          have, and I would recommend that you do that at this  
11          stage. And if you do not feel that you have  
12          adequate information, you know, obtain that  
13          information, because doing it after the approval  
14          creates something that's not under the Code. It's  
15          not that the Planning Department's going to review.  
16          It's not that the Planning Commission is going to  
17          review, which it would as part of Phase II approval.  
18          So, the Council would look at it, and if -- unless  
19          the Planning Department will correct me, I do not  
20          believe that after this Phase I of the project  
21          approval that Council would actually be involved in  
22          any conditions unless there was, for example, a  
23          breach of a condition and Council decided that it  
24          wanted to essentially unzone the property, which it  
25          does have the authority to do under Chapter 19 of

1 the Code.

2 So, those are my comments with respect to  
3 this condition. It creates a -- it creates another  
4 phase of review that's not necessarily contemplated  
5 by the Code. However, attaching these conditions  
6 based on the information you have is certainly  
7 contemplated by the Code at this point.

8 CHAIR MOLINA: Thank you, Mr. Hopper.

9 Deputy Director, can you comment, as well?  
10 Or do you have anything additional to add on this  
11 proposed condition?

12 MS. SUYAMA: Well, I have the similar concerns of the  
13 Deputy Corporation Counsel, that if there are  
14 inadequate information, that the Council obtain that  
15 information first before they make their decision.  
16 And that may be the basis of whether you either  
17 approve or disapprove the project. However, the  
18 other thing is, because this is something new, I'm  
19 not really sure, you know, what would be the process  
20 by which the Council would review the information  
21 and propose the conditions, because there are other  
22 provisions in Maui County Code, you know, Title 19  
23 that talks about when you do amendments to the  
24 conditions or do unilateral agreement, it is handled  
25 on -- generally as another Change in Zoning

1           Application that comes forward through the Planning  
2           Commission and then eventually to the Council as a  
3           public hearing item. And I'm not sure if by doing  
4           this if that change in conditions would be subject  
5           to that provisions of Chapter 19.

6           CHAIR MOLINA: Okay. Thank you, Director.

7                         And that is where I'm not quite clear, for  
8           me. I'm not really sure about, you know, what the  
9           ramifications would be.

10                        Mr. Hopper?

11           MR. HOPPER: Yeah, and just to -- and it is very clear  
12           that it is the burden on the Applicant to establish  
13           that it is entitled to this Change in Zoning and it  
14           meets the requirements, so that if you're not  
15           satisfied with the information provided, you can  
16           require them to provide the additional information;  
17           and if they fail to provide it and you believe  
18           that -- based on what you have you do not believe  
19           they've met their burden of showing that they have  
20           met the requirements for a Change in Zoning, then  
21           you would not be compelled in any way to grant a  
22           Change in Zoning. You would not have to if you did  
23           not have that information.

24           CHAIR MOLINA: Okay. Thank you.

25                        Member Anderson?

1 COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman.

2           You know, the reason I proposed this  
3           condition is because in our application requirements  
4           for Change in Zoning, 19.510 -- I wish Members all  
5           had a copy -- if you want to check your Code. I  
6           think I passed this out early on, but lord knows  
7           where it is now. Content of application, All  
8           applications shall provide the following  
9           information, and it lists 20-some criteria that need  
10          to be provided. And 14 says, Sewage Disposal  
11          Analysis, A description of the proposed method of  
12          sewage disposal and comments, if applicable, from  
13          the Departments of Health and Land and Natural  
14          Resources of the State and Departments of Public  
15          Works and Water Supply of the County. Sewage  
16          Disposal Analysis. And we never got that. And we  
17          asked several times, months back, for the Applicant  
18          to provide us some solid information on how he's  
19          going to dispose of effluent from his private  
20          wastewater plant. We already know we have problems  
21          with injection wells.

22                 Now, you know, it's one thing to say what you  
23                 intend to do, but it's another thing to prove that  
24                 you can do it in an analysis. And since we didn't  
25                 receive this within the application, then I think

1           that we are mandated by law to have this information  
2           so we can meet our criteria of approval in finding  
3           that there will be no adverse impacts to the  
4           surrounding community or to public services or  
5           facilities, Mr. Chairman. And, so, that's why I've  
6           done this condition. There are several other  
7           application requirements that have not been met and,  
8           you know, I've asked for that information for months  
9           and we've not received it. I don't think there's  
10          anything prohibiting us from doing this. Mind you,  
11          he is seeking project district zoning, but he -- in  
12          order to get that project district zoning, he must  
13          fulfill the change of zoning application  
14          requirements, according to Title 19. And, so, you  
15          know, particularly because this is a private  
16          wastewater system, I think we need to have that  
17          analysis so that we're assured that there's not  
18          going to be any adverse impacts. And, you know,  
19          after the analysis is done, prior to Phase II -- I'm  
20          only doing this in a way to help the developer move  
21          forward should this be approved. He would have time  
22          to get that analysis done, to provide it to the  
23          agencies that are required by Title 19 to review it,  
24          and -- you know, it's their agency review that is  
25          really going to tell us whether this is a feasible

1 system, whether it's going to have any adverse  
2 impact, whether it's going -- whether or not it's  
3 going to adversely impact the near-shore waters,  
4 which are already impaired, and how -- what his  
5 method of disposal will be so that he will not  
6 adversely impact the near-shore waters. And, you  
7 know, if -- the reason I put this in, shall be  
8 subject to additional conditions or amendments by  
9 the Council if warranted, that allows us the  
10 opportunity to fulfill our responsibility here in  
11 putting conditions in place to protect the public,  
12 and that's what we should be doing, you know, in all  
13 of these conditions.

14 And if we don't have the information  
15 necessary to, you know, make an adequate condition  
16 regarding sewage disposal, then, you know, how can  
17 we do our job?

18 And, you know, Ms. Suyama's right. If you  
19 look at Title 19 under Conditional Zoning, it does  
20 state that amendments or changes of condition --  
21 changes or alterations of condition -- conditions  
22 shall be processed in the same manner as petitions  
23 for zone changes. Well, you know, if they've done  
24 it up front we wouldn't -- they wouldn't have to do  
25 it a second time, if there are conclusions in the

1 analysis that would warrant additional conditions.  
2 So, that doesn't mean they have to do a whole brand  
3 new application. It's just a petition to amend the  
4 conditions that we may be imposing if this passes so  
5 that we have another opportunity to fulfill our  
6 obligation to the public, Mr. Chairman, in ensuring  
7 that we can mitigate any adverse impacts. And as I  
8 said, if this Sewage Disposal Analysis had been  
9 provided to us we wouldn't -- it wouldn't be  
10 necessary to ask for this condition. And I know  
11 Mr. Jencks made comments when we brought this up  
12 that -- he provided all this stuff, but I haven't  
13 seen any Sewage Disposal Analysis that was reviewed  
14 by all of these agencies, required by our Change in  
15 Zoning, and they're the ones who give us the  
16 independent analysis or review of this analysis,  
17 because anybody can hire anybody to say anything.  
18 It's that independent review that gives us the  
19 information that we need in order to determine  
20 whether or not something needs to be mitigated. So,  
21 you know, I think we're just fulfilling our  
22 responsibility to meet the criteria of approval by  
23 imposing this condition.

24 Thank you, Chairman.

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

1 I'd like to call up Mr. Jencks, if you could  
2 respond to the issue of this Sewage Disposal  
3 Analysis.

4 MR. JENCKS: Thank you, Mr. Chair.

5 Anything specific?

6 CHAIR MOLINA: Member Anderson has made references to the  
7 information requested.

8 Can you reiterate on that issue, please?

9 MR. JENCKS: I'd be happy to.

10 I do recall, Mr. Chair, that the Committee  
11 asked me to provide information on the cost to  
12 provide service for both domestic water and  
13 wastewater through this plant, and I did provide a  
14 letter and we discussed those two factors  
15 extensively in Committee. I did tell the Committee  
16 that at that time the cost for the domestic water  
17 would be approximately three and a half dollars per  
18 thousand gallons, which is pretty close to where we  
19 are today. And I also told the Committee -- and I  
20 don't recall the exact numbers -- but that the fee,  
21 which is a PUC-regulated fee for the wastewater fees  
22 in the project would be a little more -- I don't  
23 recall the exact number -- than what you pay in the  
24 County of Maui, which I think gets us back to the  
25 true cost of those services. We also did discuss in

1           that letter, as I recall, the type of plant and the  
2           way the cost would be recovered for constructing the  
3           plant.

4                        I would like to provide to the Committee  
5           today, Mr. Chair -- this is the -- this is the  
6           section of the Change in Zoning Application that was  
7           submitted in 2000. Wilson Okamoto Corporation did  
8           an infrastructure study for the application which  
9           included domestic water, wastewater drainage,  
10          et cetera. And this -- this section of the  
11          infrastructure component of the Change in Zoning  
12          Application talks about the wastewater system for  
13          the project, which includes in the future a  
14          connection to the County system, which is reflected  
15          in the conditions we proposed and which are carried  
16          through from the original Change in Zoning for the  
17          golf course. But also, Mr. Chair, it talks about  
18          the development of an interim wastewater treatment  
19          plant to treat the wastewater for the project until  
20          that connection to the County system could be made,  
21          and that is in this document right here. I'll give  
22          it to Carla.

23          CHAIR MOLINA: Okay. Please go ahead and hand it out.

24                        Member Anderson, question for Mr. Jencks.

25          COUNCILMEMBER ANDERSON: Wait. We already know that the

1 County isn't interested in having them connect to  
2 their system. Back in 2000, I'm assuming that that  
3 was...(end of side A, tape 1)...compliance with the  
4 condition that's already on the land which said  
5 that -- says that eventually they will connect to  
6 the County's wastewater system and provide their own  
7 system in the interim. But I have not seen that.  
8 It was not attached to the County Planning  
9 Department's report to us. And I would like to ask  
10 Mr. Jencks if that was ever sent out for review to  
11 the Department of Health or DLNR or our Public Works  
12 Department.

13 MR. JENCKS: Yes, it was. And I might add, I reviewed  
14 the --

15 COUNCILMEMBER ANDERSON: And do you have review letters  
16 from them?

17 MR. JENCKS: The Department of Health had no comment on  
18 the application. Both the original Planning  
19 Commission report to the -- Planning Department  
20 report to the Planning Commission and the updated  
21 report that you had the Planning Department do in  
22 February of this year, I think it was, included a  
23 discussion on the proposed wastewater treatment  
24 program for the project, which is exactly as I just  
25 represented, that we would be doing a -- an onsite

1 plant. And one of the key features of that plant  
2 that the Planning Department made was that we would  
3 be taking the wastewater and using reclaimed water  
4 for the irrigation of the confidential course. That  
5 was the primary use of that water, not injection  
6 well, reclaimed water for use on the golf course.

7 CHAIR MOLINA: Member Anderson?

8 COUNCILMEMBER ANDERSON: May I ask Ms. Suyama if she  
9 received that Wilson Okamoto study and if it was --  
10 if she sent that to these various agencies for their  
11 review?

12 CHAIR MOLINA: Director?

13 MS. SUYAMA: I believe we did receive the study. But  
14 because it's after everything that was -- you know,  
15 that was already transmitted to the Council, we  
16 didn't do any formal transmittal to any agency for  
17 review and comments.

18 COUNCILMEMBER ANDERSON: Yeah. And that's the problem,  
19 Mr. Chairman, because they're the experts who would  
20 review this to determine whether or not, you know,  
21 this -- and I don't know if it's an analysis or if  
22 it's just, you know, a reiteration of promises. An  
23 analysis means you have hard data. And, you know,  
24 that's why I'm concerned that we don't have any  
25 review from these agencies that we're required to

1           have so that we know that they're assured that there  
2           won't be any adverse impacts.

3                   And where is the guarantee that there will be  
4           no injection wells at all?

5                   I mean, I guess we could put that in as a  
6           condition. But I just -- I just feel like we don't  
7           have -- we don't have a solid ground here, because  
8           we don't have an analysis. And I'd like to see  
9           what -- you know, if Ms. Nakata can at least pass  
10          that down for us today to look at, at least we've  
11          got something to look at and to see how much of an  
12          analysis it really is. That's why I'm concerned,  
13          because -- you know, you can say whatever you want  
14          to say, but if it's not, you know, based on hard  
15          data, then how do you know if it's going to work, if  
16          someone who's trained in the field can look at it  
17          and say, well, you know, it's feasible that at  
18          build-out the effluent from this system could be  
19          used 100 percent as irrigation and there will be no  
20          need for injection wells. But I'm not an expert.  
21          None of us here are experts. And that's why we  
22          depend on the expert agencies to do this review, and  
23          that's why it's in our application requirements.

24                   Thank you, Chair.

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

1                   Committee Members, any questions for  
2                   Mr. Jencks at this time?

3                   Member Johnson?

4                   COUNCILMEMBER JOHNSON: Yes.

5                   And Charlie, because -- you know, we're just  
6                   reading all these things that are in, you know, the  
7                   application or the requirements, because some of the  
8                   items that you've been giving us have changes or  
9                   alterations or, you know, they've -- they're not the  
10                  same as maybe things that were submitted originally,  
11                  how would we -- or what's your expectation of the  
12                  County's role in getting the review done? Do you  
13                  believe it's your responsibility to go and send  
14                  these documents out, or do we need to do something  
15                  so that we can get the information that is required  
16                  in this particular section of the Code?

17                  MR. JENCKS: Uh-huh.

18                  COUNCILMEMBER JOHNSON: So -- I just want guidance as --  
19                  you know, because it just seems that Ms. Suyama's  
20                  not doing it.

21                  Are we -- do you expect us to do it or -- I  
22                  just don't know.

23                  MR. JENCKS: What is supposed to happen here, and I  
24                  believe what does happen, is that -- for example, in  
25                  this application -- and I'm not sure if any of you

1           took a look at the binder that was submitted for the  
2           Phase -- for the Phase I application Change in  
3           Zoning, but it has a series of sections in it, and  
4           there's maybe -- maybe 20 different sections, A to  
5           Z, and every section takes a specific area of  
6           interest. And Section F is the section on  
7           infrastructure, and what that does is it gives you a  
8           master plan level review of infrastructure for  
9           water, wastewater, drainage, and maybe roads, and  
10          what that does is it spells out the general approach  
11          that would be taken for the project at that time.  
12          That application was submitted to the County and  
13          then transmitted to the agencies. Otherwise, what  
14          are they looking at? They looked at the  
15          archaeological report and they commented on it.  
16          They looked at this report, the infrastructure  
17          report and commented on it. I met personally with  
18          the Department of Health and talked about (a) the  
19          wells for the property and (b) the wastewater system  
20          and brought them up to date in 2005 in preparation  
21          for this series of meetings.

22                        So, there is a review. These agencies review  
23          a document. They're reviewing something that  
24          they're sent that says, look, this is what these  
25          people are proposing; what are your comments or

1 concerns? Like with the roads, the original  
2 proposal had specific recommendations for roadway  
3 improvements. Those were reviewed by the State  
4 Department of Transportation. Same with wastewater,  
5 with the Department of Health. DLNR reviewed the  
6 archaeological reports, the flora and fauna reports  
7 and came back with recommendations that are a matter  
8 of record in the comment file on the project held by  
9 the Department of Planning, and you have those  
10 comments.

11 COUNCILMEMBER JOHNSON: But what I'm getting at is, that  
12 when the documents that they were provided with  
13 originally have gone through further analysis and  
14 additional information has been added to the file or  
15 it's been added to -- really, I guess, it would be  
16 an addendum to the application, which, basically,  
17 alters the factual basis on which any one of those  
18 agencies would make a comment, that information may  
19 precipitate a different response, and that's where  
20 the challenge comes in. Because, you know, if you  
21 take a point in time five years ago and then you  
22 look at what the conditions are now, they're not the  
23 same. So, I understand what you're saying. But if  
24 we can't get some reasonable expectation that we're  
25 going to get a comment back that makes sense for

1           this time and this place, given the set of  
2           circumstances that we're faced with now, we can't  
3           make an intelligent decision.

4       MR. JENCKS: Well, can you give me a good example of that  
5           concern today relative to this project?

6       COUNCILMEMBER JOHNSON: I'll give you a good example on  
7           the -- I guess it would be -- and I'm trying to  
8           think of -- I guess there have been so many  
9           different things. But on the inventory with  
10          conservation area, for example, because there's been  
11          a back-and-forth from the Office of Hawaiian Affairs  
12          on what Ms. Anderson was -- well, actually, they  
13          haven't even seen her proposal yet, ostensibly --  
14          so, that area, though, is of great concern because  
15          there were other people that looked at the area,  
16          there have been, I think, two separate additions to  
17          that information, and then there was the  
18          back-and-forth, the phone calls and everything  
19          between, I guess, yourself and OHA, and then the  
20          information that we're being given, which was in the  
21          letter form, that shouldn't be happening if  
22          everything was done properly from day one and it was  
23          clear. We shouldn't have this back-and-forth.

24       MR. JENCKS: Allow me to respond to that. I think you  
25          make a good point. I think with regard to the

1 conservation preservation area issue, if you go back  
2 and you look at the letters, the current letters and  
3 the past letters with regard to flora and fauna  
4 issues, endangered species, native plants, you won't  
5 find any reference from DLNR, US Fish and Wildlife  
6 on any need to preserve any of this land. In fact,  
7 we did the analyses on the Hoary bat, the owl, and  
8 the flora, submitted those, didn't get any comments  
9 back of concern, even on the most recent reports  
10 that we updated in 2005. The reason why we're  
11 talking today about a preserve -- a nature  
12 conservation area for the project is because an  
13 individual went out on the property and identified  
14 native plants. No one has ever disputed the  
15 existence of native plants on the site. But that  
16 plan has evolved because of that person's  
17 observation, which is fine. But with regard to  
18 professional review of the facts of the reports --  
19 of the technical reports, there isn't any reference  
20 in this specific issue with regard to a need to  
21 preserve any portion of this land for a conservation  
22 area.

23 COUNCILMEMBER JOHNSON: Okay. Well, how about the  
24 Department of Transportation?

25 I believe at one point they made a comment

1           that said, well, we haven't received an updated -- I  
2           guess it was the traffic impact analysis report --

3 MR. JENCKS: Uh-huh.

4 COUNCILMEMBER JOHNSON: -- that type of thing. And I  
5           don't know if since then -- because I haven't -- you  
6           know, I mean, these binders are voluminous. So, I  
7           don't know. And the traffic situation has changed.  
8           So, that's another example.

9 MR. JENCKS: Well, once again, to clarify briefly, we've  
10          done three traffic reports for this project. Every  
11          report was reviewed, sent to DOT and reviewed by  
12          DOT. The last traffic report that we did that this  
13          Council Committee reviewed in June of 2005 was  
14          reviewed by State DOT and the result of that review  
15          was to tell the Applicant improve the Piilani  
16          Highway from Kilohana to Wailea Ike Drive, and a  
17          separate report analyzing that was done, as well.  
18          So, three reports, always commented by DOT and the  
19          Department of Public Works, with the results being  
20          significant improvements required of the project I  
21          think is real progress, and I think that issue has  
22          evolved through time. As you correctly point out,  
23          the first report didn't contemplate the improvement  
24          to Piilani from two lanes to four lanes, which the  
25          project team, with the assistance of Makena Resort,

1           did and completed, which changed dramatically the  
2           traffic picture in South Maui.

3           COUNCILMEMBER JOHNSON: Yeah. And I think that, at least  
4           on this particular condition, what I'm sensing is  
5           that there is a difficulty that we're having with  
6           the updated reports, and it may have absolutely  
7           nothing to do with your land at all. It may be the  
8           gradual worsening of the near-shore water quality  
9           and conditions because of the heavily developed  
10          areas that are along the coastline and even some of  
11          the mauka lands. That condition is continuing to  
12          degrade that whole area. And I guess the difficulty  
13          that I have in -- and perhaps I can't speak for  
14          Member Anderson, but some of the frustration is that  
15          we see it happening, we see it worsening, we get  
16          comments that almost sometimes from the agencies  
17          don't reflect what the current conditions are and  
18          what is actually occurring at the present time on  
19          the property. That may not even be, you know, on  
20          your property; it may be near to where the building  
21          would occur. So, I guess the frustration,  
22          Mr. Jencks, is that what we're looking at is trying  
23          to not add to the already serious degradation of the  
24          near-shore water quality, to create any more  
25          problems than we already have. And I think that --

1           that's the way I'm looking at this particular  
2           component. Just let's not make it worse.

3       MR. JENCKS: I agree with you 100 percent.

4           And getting back to the immediate subject,  
5           which is the wastewater treatment plant, this plant,  
6           the design of this plant will go through a complete  
7           environmental review with an environmental  
8           assessment, most probably an EIS. That will require  
9           the County of Maui and the Departments to review on  
10          that document, as well as the State Department of  
11          Health. One of the things that you just addressed,  
12          Council Member, which I think is very important, is  
13          the issue of reclaimed water. If this project was  
14          meant -- or required to connect to the Kihei  
15          treatment plant, there's no promise that that water  
16          would be used for a period of time. This project is  
17          proposing the development of a wastewater treatment  
18          plant consistent with all uniform regulatory laws  
19          which were in -- by the way, it's highly regulated  
20          by the EPA and the State Department of Health and  
21          the County of Maui, and using all that water. And  
22          I've said here give me a requirement to reuse all  
23          the water. That's fine. That's our goal. That's  
24          our intent. I don't want to put money down a rat  
25          hole or an injection well. It should go on the

1 ground for a closed system. That's our goal; that's  
2 what we intend to do. But bringing an application  
3 back to the Council after zoning has been approved,  
4 for review and comment, with no specific -- and  
5 Mr. Hopper brought this up -- no specific criteria  
6 for evaluation, when you've got a complete body of  
7 people and professionals evaluating the application,  
8 in the interest of the public, I'm not quite sure  
9 there's any value in that.

10 CHAIR MOLINA: Okay.

11 COUNCILMEMBER JOHNSON: Thank you.

12 CHAIR MOLINA: Thank you, Member Johnson.

13 Members, Chair, again, is still not quite  
14 clear on the second sentence of Member Anderson's  
15 proposal. I'm supportive of the first sentence.

16 I would like to call for a ten-minute recess  
17 to confer with Corporation Counsel --

18 COUNCILMEMBER ANDERSON: Mr. Chair?

19 CHAIR MOLINA: -- and the Planning Department.

20 COUNCILMEMBER ANDERSON: Before we recess --

21 CHAIR MOLINA: We'll be in recess till 2:30.

22 **RECESS:** 2:20 p.m.

23 **RECONVENE:** 2:35 p.m.

24 CHAIR MOLINA: (*Gavel.*) Recessed Land Use Committee  
25 meeting of October 18th, 2007, is now back in

1 session.

2 It's Thursday, November 1st, 2:35 p.m.

3 Members, we have left off on a proposed  
4 amendment to take out Condition 16 and 17 and  
5 replace it with language as proposed by Member  
6 Anderson. So, at this point a motion is on the  
7 floor. We are in the phase of discussion. The  
8 Chair will be ready to act and ask Members for their  
9 comments, including the Chair's.

10 Member Anderson?

11 COUNCILMEMBER ANDERSON: Thank you very much, Chair.

12 You know, during the break, this report that  
13 Mr. Jencks referenced was copied for everybody, and  
14 I want to draw your attention to Page 4. It's not  
15 an analysis. It's a Site and Infrastructure Master  
16 Plan that was done in June of 2000. And there's no  
17 analysis in here at all. It says that the Wailea  
18 670 development will be planned to allow for  
19 connection and service by the municipal wastewater  
20 system; we already know that's not feasible.  
21 According to the Division of Public Works and Waste  
22 Management, adequate treatment capacity is available  
23 for the project at the Kihei Wastewater Reclamation  
24 Facility; we already know that's not going to  
25 happen. Based on the anticipated development

1 phasing, approximately 135 residential units of the  
2 proposed project are expected to be completed in  
3 2003; we know for sure that didn't happen. As a  
4 temporary measure, an onsite treatment facility is  
5 anticipated in the interim. Total build-out period  
6 for Wailea 670 is anticipated to be 17 years.

7 Now, this is all they have about their sewage  
8 system. Wailea 670 will develop and construct its  
9 own sewer collection system for connection to the  
10 future gravity sewer line in Piilani Highway.

11 Figure 2-2 shows a proposed sewer system for the  
12 development, which includes gravity lines, force  
13 mains, and sewer -- sewer and pump stations. Again,  
14 it's just a map with lines drawn on it. It doesn't  
15 even show where the wastewater -- or the sewage  
16 treatment plant is to be located, at least I can't  
17 see it. It doesn't show it. It just shows the  
18 lines, where the lines are going to go. We have  
19 subsequently gotten a map that shows the wastewater  
20 treatment facility in the bottom right-hand corner  
21 of the project; and this was done, I guess, after we  
22 asked early on about where this was going to be  
23 located. And then it just says a sewer system will  
24 be designed and constructed in accordance with  
25 County of Maui standards. So -- an onsite treatment

1 unit is planned as an interim measure before they  
2 hook up to the Kihei wastewater reclamation  
3 facility. The proposed clubhouse is situated below  
4 the underground injection control line, which runs  
5 along the 600-foot contour, based on consultation  
6 with the State Department of Health. It would be  
7 permissible to develop a temporary private sewage  
8 treatment plant with a disposal system on the  
9 project.

10 Well, who consulted with who, you know?

11 There's no -- there's no data here for  
12 anybody to review, Mr. Chairman. Even if they sent  
13 this out to Department of Health and DLNR, they  
14 would say no comment because there's nothing here to  
15 comment on. Again, it's just, you know, two  
16 paragraphs. This does not constitute a Sewage  
17 Disposal Analysis as required by our County Code  
18 application requirements.

19 And, you know, Chair, we're the elected body  
20 here. We're the ones making the decision on behalf  
21 of the public and we have the right to impose  
22 conditions to mitigate adverse impacts, and if we  
23 just pass this off and say, oh, well, DOH will cover  
24 it and DOH will -- they'll have to follow DOH  
25 regulations, well, of course they have to follow DOH

1 regulations. But DOH agency people and Directors  
2 are not elected by our constituency to sit in these  
3 chairs and make decisions on behalf of our public.  
4 That's what we're elected to do.

5 And, so, the reason I wrote this condition is  
6 because I want us to fulfill our responsibility. I  
7 want to make sure that there is an adequate Sewage  
8 Disposal Analysis that's been adequately reviewed by  
9 the agencies called out in our County Code and that  
10 we then have the opportunity to place mitigation  
11 measures. Hey, maybe they're going to say that this  
12 isn't an adequate site; this isn't the place for  
13 this treatment plant. This treatment plant should  
14 be up at the top of the project so that  
15 everything -- you know, I don't know, because I  
16 don't know enough about a sewage treatment plant.  
17 But that's the whole point, none of us do, and  
18 that's why we need expert agency review. And, you  
19 know, we asked -- or at least I did, you know, way  
20 back, March, April, May, we could pull out the  
21 minutes. You know, I called out all the areas in  
22 this application that were inadequate, and that was  
23 one of the reasons I asked for the Planning  
24 Department to give us an updated report. And, you  
25 know, we got an updated report, but we didn't get

1           any new information, any new analysis, any more  
2           complete application requirements. And I'll tell  
3           you right now, I have done a thorough analysis on  
4           this project, I've spent -- I would venture to say  
5           hundreds of hours on it, and I can tell you right  
6           now the areas where we do not have complete  
7           information as called out for the application of a  
8           Change in Zoning.

9                       Policies and objectives of the General Plan,  
10           the provisions of the community plan applicable to  
11           the application, the provisions of the applicable  
12           district, and an analysis of the extent to which the  
13           application, if granted, conforms to these policies,  
14           objectives and provisions; that's not in there. You  
15           know, there's a few things in there that's -- in the  
16           community plan that support this project, but the  
17           policies and objectives that are not supported by  
18           this project are not analyzed, and I could give you  
19           a list of those, too.

20                      We don't have a preservation mitigation plan  
21           for the historic sites on the project that had been  
22           reviewed and approved by DLNR or OHA. There was no  
23           analysis in the application regarding secondary  
24           impacts. That's application requirement 10. We  
25           don't have an adequate traffic impact and analysis.

1 CHAIR MOLINA: Member Anderson, we're.

2 COUNCILMEMBER ANDERSON: I'll stop --

3 CHAIR MOLINA: Yeah.

4 COUNCILMEMBER ANDERSON: -- because I know we're focusing  
5 on this one thing. But I know already that Corp  
6 Counsel has told us that, you know, if we don't  
7 think we have adequate information to send it back.  
8 But if we're going to send it back, there's a whole  
9 lot that we don't have adequate information on.

10 CHAIR MOLINA: Okay.

11 All right. Members, we're focused on this  
12 proposed replacement of Condition 16 and 17 with  
13 Member Anderson's proposal for the sewage disposal  
14 and analysis.

15 Mr. Pontanilla?

16 VICE-CHAIR PONTANILLA: Thank you, Chairman.

17 And the reason why I call your attention,  
18 Chair, is that, you know, as far as the Sewage  
19 Disposal Analysis -- and I understand that the  
20 Department of Health does that -- is there a  
21 possibility of having the Department of Health come  
22 to this meeting and kind of explain to us the  
23 criteria in regards to a wastewater facility?

24 You know, like Member Anderson, none of us  
25 are experts. And, you know, I rely on our

1 environmental management people to give us  
2 information in regards to wastewater matters. But  
3 in regards to this, the Department of Health would  
4 be the approving authority, and I surely would like  
5 to hear from those guys, you know, what criteria  
6 they look at in regards to coming out with an  
7 analysis in regards to a proposed treatment plant.  
8 I don't want to go in circles, you know.

9 CHAIR MOLINA: Yeah, totally understood.

10 Now, I don't know if at this point we're  
11 going to hold up the Committee to await a response  
12 from the State. And you know how the State -- how  
13 long it takes them to respond, which is again why  
14 when we adjourned our meeting in September I had  
15 asked all Members if you have questions on certain  
16 conditions and you need responses from various  
17 Departments and resource people, whether it be State  
18 or County, that would be the time for each one of us  
19 to go and seek the answers to these concerns. So,  
20 anyway, I just want to leave you guys with that  
21 thought.

22 As we had heard from the Planning Department  
23 Director, Deputy Director, this is something  
24 somewhat new. I believe in the Makena application,  
25 which is, of course, a project along these lines,

1           which is a very large project, there was no  
2           condition proposed similar to what is being  
3           considered, as well. So, I just want to make that  
4           clear to the Members, especially the newer Members.  
5           So, I can agree in part with some of the -- you  
6           know, at least the first sentence of Member  
7           Anderson's proposal. But the second sentence, for  
8           me, just still leaves a few open ends in my mind.

9                        So, any other Members before the Chair calls  
10           for the vote on this condition?

11                       Member Medeiros, followed by Member Johnson.

12   COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

13                       I'm looking at the Code and I'm trying to get  
14           a clear understanding. In 19.510.010, Page 652-12,  
15           under 14, regarding disposal analysis, it doesn't  
16           say who is supposed to perform that. It says the  
17           Departments that will review it, including the  
18           Department of Health, Land and Natural Resources,  
19           Public Works, and Environmental Management and Water  
20           Supply.

21                       So, is the Applicant supposed to do that?

22                       It's not specific.

23   CHAIR MOLINA: Let me first ask Planning Department if you  
24           have any insight on Member Medeiros's question.

25   MS. SUYAMA: Normally what we do is, that in the

1 application, the Applicant provides us the  
2 information from the following Chapter 19.510, and  
3 usually we have a checklist, which is part of the  
4 application, that they indicate where the  
5 information is located in the application document.  
6 After that, when we get the application, we then  
7 send it to the appropriate agencies. Like, if  
8 Department of Health is -- should be commenting on  
9 it or DLNR, we send that -- those applications to  
10 them. They comment -- to the best of their ability,  
11 they comment. In some cases, we just get a "no  
12 comment" letter. In others, you know, they say  
13 that, we will comment at some later point in the  
14 reviewing process, as there's more specific  
15 information, you know, for the agencies. But those  
16 agencies that do review the applications and do  
17 provide their input, we attach those as exhibits to  
18 the Department report. There are cases where, you  
19 know, we send it out -- we usually give a 30-day  
20 review process with the reviewing agency, and if  
21 they don't meet the 30-day review process, we send  
22 out reminder notices to the agencies. We try to  
23 call the agencies to find out, you know, why they  
24 have not commented to date. But we can't force an  
25 agency to comment if -- you know, if they don't find

1           that that's something that they want to do. So, at  
2           some point in time the Department does make the  
3           decision that we need to move forward with the  
4           application, because we can't keep an application  
5           open indefinitely. But normally when that happens,  
6           you're talking about -- maybe about six months have  
7           gone by in which we haven't gotten anything from the  
8           agencies in terms of comments, and therefore, at  
9           that point in time, we make a decision that -- you  
10          know, that the agency did not respond, and then we  
11          send out whatever information we have to the  
12          Planning Commission, and the Planning Commission  
13          then does their deliberation. If they find -- like  
14          in this case, they found that they wanted more  
15          information, the Planning Commission at that point  
16          would indicate what information they require of the  
17          Applicant, and we then tell the Applicant, your  
18          application is -- you know, action is deferred until  
19          you provide, you know, whatever; and once we receive  
20          that information, many times we will send the  
21          information out for re-review by the agency because  
22          it's generally new information that has been  
23          received for their comments. And we may still have  
24          the same problem in which some of the agencies will  
25          not respond and then we'll just take it back to the

1           commission for their determination and action. In  
2           this case, the application first went to hearing in  
3           2000. It was deferred for that additional  
4           information, and they did not come back to the  
5           commission until late 2001, one year after the  
6           public hearing, and at that point, with the  
7           additional information, the commission made its  
8           decision.

9           COUNCILMEMBER MEDEIROS: Okay. I just wanted to ask -- I  
10           know the application came through during -- probably  
11           two Administrations ago.

12          MS. SUYAMA: Uh-huh.

13          COUNCILMEMBER MEDEIROS: But I wanted to know, in your  
14           Department's policies and procedures, do you have  
15           that checklist that is applied to completing the  
16           application?

17          MS. SUYAMA: It is attached to all of our application  
18           forms. I believe there was one that was done by  
19           Wailea 670.

20          COUNCILMEMBER MEDEIROS: Okay. So, there is a checklist  
21           that's attached to the application.

22                    So, when it's returned by the Applicant, your  
23           Department goes through that checklist --

24          MS. SUYAMA: We normally will go through the checklist to  
25           verify that the information that they're providing

1 is in the documentation. Because usually it's a  
2 thick document and what they'll do is they'll  
3 indicate where in the document the information is  
4 located.

5 COUNCILMEMBER MEDEIROS: Right, right. Okay, I understand  
6 that part. My focus is on that checklist.

7 So, the Applicant gets a checklist and the  
8 application, he completes it, submits it.

9 And if the Planning Department accepts it as  
10 complete, as it has done so in order for them to  
11 send it to this body --

12 MS. SUYAMA: Uh-huh.

13 COUNCILMEMBER MEDEIROS: -- then why -- I mean, how does  
14 the Applicant know that there's information missing?

15 MS. SUYAMA: The only way the Applicant knows if  
16 information is missing is the Staff Planner will  
17 write a letter to the Applicant saying that...(end  
18 of side B, tape 1)...application. A lot of times  
19 we'll also write back saying that we don't feel that  
20 the information is adequate, the content of the  
21 information is not adequate, and we may pose to the  
22 Applicant and their consultants that we want  
23 additional reviews or additional analysis.

24 In this case, I believe that when this  
25 application came in we didn't have the checklist

1 attached to the application at that point. But  
2 because there were numerous times when applications  
3 came before the Council, the -- you know, the  
4 Council Members questioned whether there was  
5 adequacy in the application, we instituted the  
6 checklist as part of the application process. And I  
7 believe because of that, the Applicant did provide a  
8 checklist, you know, for the Department.

9 COUNCILMEMBER MEDEIROS: Okay. And Mr. Chair, if you  
10 allow me one more question.

11 CHAIR MOLINA: Proceed, Mr. Medeiros.

12 COUNCILMEMBER MEDEIROS: Thank you for, you know, your  
13 indulgence.

14 Finally, when you sent the -- when the  
15 Department of Planning sends the application to the  
16 Planning Commission, is this checklist also attached  
17 so they can review it and say, okay, everything has  
18 been submitted to us? Or do they go through the  
19 review and then they find out, oh, they need some  
20 other information because it wasn't attached?

21 MS. SUYAMA: We recently instituted that in the Department  
22 report, that we want the report now to indicate to  
23 the Commission as well as to the Council, when it  
24 has to come up to Council, that it has met the  
25 requirements of Chapter 19.510 and this is how it

1           meets those requirements as part of the Department  
2           report.

3           COUNCILMEMBER MEDEIROS: Okay. Thank you, Department.

4                         Thank you, Mr. Chairman.

5           CHAIR MOLINA: Thank you, Mr. Medeiros.

6                         Member Johnson?

7           COUNCILMEMBER JOHNSON: Yes, Ms. Suyama, because I know  
8                         that you were not -- at least in the role of -- you  
9                         know, being a leadership position within Planning  
10                        Department when this originally came through, based  
11                        on what you've seen today in terms of just the very  
12                        narrow amount of information that was provided,  
13                        under the requirement where it says Sewage Disposal  
14                        Analysis or solid waste disposal analysis, which to  
15                        me is a little bit more in-depth than just making a  
16                         cursory comment, do you believe anywhere in the  
17                        documentation that we have that that part of the  
18                        Code has been complied with?

19           MS. SUYAMA: I believe in a general sense it has been  
20                        complied with. They did indicate how they were  
21                        going to do their sewage disposal, which is at that  
22                        time they were going to build their own private  
23                        system in which they were going to do their -- as an  
24                        interim measure the sewage treatment plant and they  
25                        were going to do the whole collection system, and

1           until they could connect to the County system, they  
2           were -- you know, it was going to be an interim  
3           provision until they met the -- you know, they  
4           connected to County system. But throughout all of  
5           this discussion that's gone on through the Council  
6           level, it's now where the County does not want them  
7           to connect to the County system, so it's basically  
8           going to be an independent, private -- private  
9           treatment plant managed by the development. And in  
10          doing that, the Applicant is going to have to now --  
11          you know, if this project is approved, the Applicant  
12          is going to have to design how -- how the plant is  
13          going to be constructed and all the specifics of the  
14          plant, and that information eventually will go to  
15          all the different agencies for review to make sure  
16          that it meets the Clean Water Act, EPA standards,  
17          et cetera, you know. And right now, most of the  
18          disposals are through injection wells unless there's  
19          a method of reuse and unless you make it a  
20          condition, which you have, you know, basically  
21          saying that you shall reuse the effluent, the  
22          treated effluent so that you cannot -- you know, so  
23          most of it will not go into injection wells.  
24          However, injection wells will still be built because  
25          that is your backup system. In case something

1 happens to the plant, you still need to dispose of  
2 the wastewater during that time, so probably you're  
3 still going to have injection wells to do the  
4 disposal in an emergency situation. But on an -- on  
5 the most part, you're looking at having this water  
6 reused within the project site for their  
7 landscaping. Because, you know, when I talked to  
8 Dave Taylor, it's estimated that if 1400 units were  
9 built on this project, less than half a million  
10 gallons per day of wastewater effluent would be  
11 generated, and that's why they need the backup  
12 wells, the brackish wells to continue the  
13 irrigation, because whatever's generated from the  
14 plant cannot meet all of their irrigation needs for  
15 the project. So, you know -- I mean, as long as  
16 someone comes up with their proposal, that this is a  
17 proposal that is acceptable to the agencies as a  
18 method of meeting your infrastructure requirement,  
19 that is how far it goes at this level, at the  
20 Council level or to the land use changes level,  
21 because there's subsequent reviews that go on, and  
22 during that time more detail and more specific  
23 information is supplied and it's generally at the  
24 Commission level and finally at the Departmental  
25 levels, when the other permits are issued. But it's

1 a progression that at the Council level many things  
2 are just on a conceptual basis, and not every  
3 detail, you know, has been reviewed at that point.  
4 The Council in their review, if they feel that  
5 information is lacking, the Council has the ability  
6 to request that information and that information is  
7 the basis by which you're going to make your  
8 decisions. So, if you feel the information is  
9 lacking to date, you should ask the Applicant for  
10 that information before you make your decision; and  
11 if you don't get that information, that probably  
12 will influence your decision as to whether you  
13 approve or disapprove this project or whether you  
14 want to place conditions or not place conditions on  
15 the project.

16 COUNCILMEMBER JOHNSON: Yeah. And because this is part of  
17 the initial application requirement -- and I  
18 understand what you're saying, is that over time  
19 there will be other agencies reviewing this -- but  
20 because it's very specific, in the Code it says  
21 content of application, all applications shall  
22 provide the following, and 14 and 15, which regards  
23 Sewage Disposal Analysis and Solid Waste Disposal  
24 Analysis, are two of those components which should  
25 be part of the application. The information, in my

1 view, that we have gotten to date is not to the  
2 level -- it says -- because it says a description of  
3 a proposed method of sewage disposal and comments,  
4 if applicable, from all those Departments. Well, I  
5 realize that you had stated they made an attempt --  
6 or the Department made an attempt to get that  
7 information, and sometimes you don't even get it  
8 with regard to these particular systems, because you  
9 can't compel the various agencies to respond back,  
10 even to a request -- if this information was  
11 provided.

12 Is that what you're saying?

13 MS. SUYAMA: What I'm saying is, that based upon that you  
14 have to provide this, you know, Sewage Disposal  
15 Analysis, we're saying that by providing an  
16 infrastructure report they did provide an analysis  
17 in saying that we are choosing to do a private  
18 system with future connection to the County system,  
19 and that was their sewage analysis at that level,  
20 which is the conceptual level. It's not the finer  
21 details of what kind of system and what kind of  
22 disposal method in terms of the system, you know,  
23 the engineering parameters of the system, because  
24 that would -- you know, in terms of development,  
25 when you look at development, they're looking at

1 land title and -- you know, land entitlements now,  
2 the zoning entitlements now. You don't go into that  
3 finer detail in terms of your actual system until  
4 you have your land entitlements, then -- down the  
5 line of the review process, then you provide  
6 additional information which will be provided at the  
7 Commission level as well as the Department levels,  
8 that information would be provided. But I think  
9 what the agencies in their comments have been  
10 basically saying is, that is a valid method of  
11 disposal is to use a private treatment plant.  
12 That's, you know, basically saying, yes, there is a  
13 way to do it, or you can connect to the County  
14 system, but either way is a viable method of  
15 disposal.

16 COUNCILMEMBER JOHNSON: Yeah, and I understand that. And  
17 I guess in gathering the information, Mr. Chair,  
18 from all of these various reports and analyses, what  
19 we do, then, is we have to weigh, okay, are the  
20 impacts that are stated going to be able to satisfy  
21 all of the appropriate tenets of -- on which we're  
22 going to base a decision to approve the application,  
23 because, number one, it can't be to the detriment.  
24 Any of these systems as they operate cannot be to  
25 the detriment of the environment, neighboring

1 properties, you know, all of these things we have to  
2 weigh. So, I understand what Ms. Suyama's saying.  
3 But, for me, the difficulty comes in is, that with  
4 only a cursory analysis and a very general, broad  
5 statement -- I mean, I guess a good example would be  
6 Maalaea, where there was to be an office building  
7 built on -- in the Maalaea Triangle. There now  
8 stands a volcano with an amusement park. So, that  
9 would be an example of -- well, there was analysis  
10 done at that given point in time about what was  
11 supposed to be done, and then subsequent to that  
12 something else which had a completely different use  
13 and impact was done. The Council did not have  
14 pur -- you know, we didn't have oversight over that  
15 particular thing. That was under the Planning  
16 Department. But, you know, to me, this -- I  
17 understand what Member Anderson's trying to achieve.

18 And I want to give an example of one other  
19 instance where the Council did impose -- and this is  
20 only one condition that I know, and that was on a  
21 park plan and a beach access plan for a property  
22 that is in Kihei, I think it was the Nelson  
23 property, and that was a condition that was imposed  
24 by Land Use Chair, I think, at that time Nishiki, or  
25 Member Nishiki. He had said that this plan had to

1 be agreeable or reviewed by the Council and  
2 agreeable because it was in my Parks Committee  
3 previous term. And, so, it might not have been an  
4 ordinary thing to say that we were to review it, but  
5 because there was no plan originally attached that  
6 we could really see, you know, conclusively what was  
7 to be done, that was a condition that was attached  
8 and it did have to come back to Council. So, that  
9 is one example of utilizing Council review outside  
10 of the norm.

11 My comment, Mr. Chair, is that on these two  
12 items I would like to try, based on all of the  
13 current information that we have, I would like to  
14 take the advice of both Corporation Counsel and  
15 Deputy Director Suyama and try to get -- with the  
16 information that we now have, try to get a bit more  
17 information in-depth analysis on 14 and 15 and then  
18 have the Department -- or have our Staff send that  
19 out for comment from the agencies that would have  
20 commented on this initially, if that's where we're  
21 going to go. Because I'm not qualified to look at  
22 the analysis and tell whether it's adequate or not.  
23 And if we're not going to allow the Council to have  
24 any kind of outside review, then I would say, based  
25 on where we stand right to date, just do the best

1           job, have the Applicant provide that analysis of  
2           where they believe they're going to go with this,  
3           and then have the agencies comment on that. That --  
4           and that's directly from the advice that we've  
5           received.

6                         Thank you.

7         CHAIR MOLINA: Okay. Maybe some food for thought. Again,  
8           it's -- if this matter does pass out of Committee,  
9           then of course it would have to go for two readings  
10          before the Council, and then there may be  
11          adequate -- it may give this -- various agencies  
12          adequate response time to, you know, your issues.

13                        Okay. Members, we haven't heard from -- I  
14           guess, Mr. Mateo, do you have any comments, or  
15           Mr. Victorino, before the Chair calls for the vote?

16                        I know Member Anderson has her hand up. I do  
17           want to give everybody an opportunity to give  
18           comment. If not, that will go to Member Anderson.

19                        Mr. Victorino?

20         COUNCILMEMBER VICTORINO: Yes. For the Department,  
21           Ms. Suyama -- and I guess for Corp Counsel, because  
22           I have sat here and gone in many different  
23           directions, and I apologize, because I'm very  
24           confused at what this all means in the bottom -- at  
25           the bottom line of what we're trying to accomplish.

1           And I'm sorry I'm not the smartest person in this  
2           room. So, you know, let's get to the point of the  
3           matter.

4                     I am asking you, with this provision that  
5           Ms. Anderson is putting forth and eliminating the  
6           other two that was recommended by the Planning  
7           Commission and commented by you folks, okay, we're  
8           saying we're going to do away with 16, 17, after  
9           we've discussed it the 1st, the 20th, the 24th, I  
10          mean, many, many times it's been discussed.

11                    My question to you, Ms. Suyama, is this more  
12          appropriate language for what we need to have here  
13          or what we have here would be appropriate?

14                    That's my question to you.

15          MS. SUYAMA: You're asking whether Ms. --

16                    Councilwoman's --

17          COUNCILMEMBER VICTORINO: Version, yes.

18          MS. SUYAMA: -- Anderson's version is appropriate?

19          COUNCILMEMBER VICTORINO: Which is more appropriate, in  
20          your mind, for us to make a decision on this  
21          project?

22          MS. SUYAMA: To be honest, I have reservations about  
23          Councilwoman Anderson's proposed condition only  
24          because it talks about conditions and amendments by  
25          the Council and it's not really clear if -- what --

1           you know, what are you reviewing it for, based upon  
2           the condition?

3                       The other one, if you're talking about the  
4           current 16 and 17, it's, I believe, clearer in the  
5           sense that, you know, this is already existing  
6           conditions that's already -- that was already  
7           provided by the Council when they did the golf  
8           course originally. These are how the conditions  
9           were written. But things have changed. Things have  
10          changed since the original condition. So, probably  
11          you want something, maybe, that's between the two as  
12          a condition. One of them -- you know, because it's  
13          been noted that they are going to do a private  
14          system, that's privately constructed and maintained,  
15          you probably want a condition to that effect, that  
16          they shall, you know, construct this private system,  
17          that shall be privately maintained and constructed  
18          because the County does not want the system.

19                      The other thing is whether you feel that  
20          there's other mitigation that's necessary. You've  
21          already done some conditions in terms of the reuse  
22          of the effluent.

23          COUNCILMEMBER VICTORINO: Right.

24          MS. SUYAMA: Right. If you want to guarantee that some  
25          agency is going to ensure compliance, that this is

1           the best system with the best method of disposal,  
2           that may be something that you may want to consider.  
3           But if you feel -- if the Council really feels that  
4           it needs additional information to make their  
5           decision, my recommendation to the Council would be  
6           is get that additional information up front, now,  
7           before you make your recommendation to the full  
8           Council.

9           COUNCILMEMBER VICTORINO: Thank you, Ms. Suyama.

10                   Mr. Hopper?

11           MR. HOPPER: I think it would be inappropriate for me to  
12           comment as far as the merits of the condition. As  
13           far as -- you know, whether or not you believe the  
14           analysis is adequate or not, I think that's your  
15           decision and I think Planning Department's  
16           recommended that -- they think that it at the very  
17           least meets their application requirements, is I  
18           believe what Ms. Suyama has said. Other Members  
19           have questioned that, as far as the information they  
20           have to make, the decision they need to make. So,  
21           the ultimate decision's up to you.

22                   If the premise of the condition, which it  
23           appears to be, is that there is an inadequate amount  
24           of information, as Ms. Suyama said, my  
25           recommendation is that you get the information and

1 deal with it at the Change in Zoning stage now, if  
2 possible, rather than saying that we'll get the  
3 information back to you later and then come back  
4 before Council for another approval. I'm not saying  
5 that it would be illegal to do it that way. It's  
6 probably possible. And Councilmember Johnson did  
7 bring up the instance with the -- I believe it was  
8 the beach access plan or something along that --  
9 along those lines. But it's really a situation  
10 where if you do have it come back before our Council  
11 you would want to have, you know, the basis for  
12 which you would be deciding the application on, the  
13 procedure for it coming back before you, because  
14 right now conditions can only be amended in the same  
15 way as someone applies for a Change in Zoning, as I  
16 would read the Code. Someone would have to put  
17 forth an application and would have to have a public  
18 hearing and things like that would have to come  
19 through, and arguably we'd have to go to the  
20 Planning Commission again to start out. Other  
21 options could be giving the approval authority after  
22 this -- you know, Councilmember Anderson's proposal  
23 is, in my opinion, in some ways being more generous  
24 to the Applicant than you necessarily have to be  
25 because it's allowing them to provide that -- if the

1           premise is the analysis is inadequate, it's allowing  
2           them to provide that later on and proceed with the  
3           project approval. What they could -- so, what you  
4           could do is have, perhaps, another entity, whether  
5           it be the State agencies or the Planning Commission,  
6           because it has to have Phase II approval, anyway,  
7           decide on the adequacy of the waste -- or the  
8           disposal plan. That's another option you could  
9           have. But, you know, the basic premise of the  
10          adequacy of the analysis I'm going to defer on  
11          because that's not my call. But as far as, you  
12          know, proceeding from here, it's my feeling it would  
13          probably work better for you to get that information  
14          now, while you have this item, and condition -- and  
15          draft the conditions as you see fit, if, again,  
16          you're going on the premise that you're not provided  
17          with adequate information, which is -- which is --  
18          you know, has to be the opinion of the whole body,  
19          and it's not necessarily the opinion of one Member.  
20          So, that's your decision, I believe.

21        COUNCILMEMBER VICTORINO: Thank you.

22                    Thank you, Mr. Chair. At least I got a  
23                    little -- a lot more clarification.

24                    Thank you.

25        CHAIR MOLINA: Thank you, Mr. Victorino.

1                   Mr. Mateo, any comments before the Chair  
2                   recognizes Member Anderson?

3                   And after Member Anderson is done, the Chair  
4                   will make his comments and we'll call for the  
5                   question.

6                   Mr. Mateo?

7                   COUNCILMEMBER MATEO: Chairman, I don't really have much  
8                   to say. I'm just awaiting the recommendation from  
9                   the Chair. And, you know, just as a comment, you  
10                  know, listening to the Planning Department telling  
11                  us if we need information now is the time to get it,  
12                  I wish when they submitted it long time ago they did  
13                  it so we wouldn't be stuck right now wasting our  
14                  time about information that we don't have,  
15                  especially when a checklist exists. So, you know,  
16                  I'm just going to wait for the vote. I'm just ready  
17                  to move.

18                  Thank you, Chair.

19                  CHAIR MOLINA: Thank you, Mr. Mateo.

20                  Member Anderson?

21                  COUNCILMEMBER ANDERSON: Yeah, Mr. Chairman, this is just  
22                  one example of many unanswered questions that we  
23                  have. If you look at the Code requirements, there  
24                  are many application requirements that have not been  
25                  submitted, which is why we have eight binders of

1 information that's come in after the application was  
2 submitted to us and why we have spent eight months  
3 trying to get that information, even more than that,  
4 because Council -- Land Use Chair Carroll spent many  
5 months last term trying to get this information,  
6 which, Members, is one of the reasons that prompted  
7 the amendment to Title 19 application and procedures  
8 that we all passed unanimously earlier this year,  
9 which says, For all Community Plan Amendment and  
10 Change in Zoning Applications deemed complete, the  
11 Planning Director shall prepare a report that shall  
12 include an assessment and detailed explanation for  
13 each requirement set forth in Section 19.510.010, D.  
14 The report shall include all relevant data, studies,  
15 agency reports, and any other information relied  
16 upon by the Planning Director in finding that an  
17 application is complete. We all added that to the  
18 application requirements earlier this year, Members,  
19 because of this very situation that we're in. And  
20 if two sentences saying that they're going to do a  
21 private -- or their own sewer collection system,  
22 that will be designed and constructed in accordance  
23 with the County of Maui standards, if that qualifies  
24 as an analysis, then shut my mouth. An analysis  
25 requires data, you know, in order for you to analyze

1           whether or not the data is sufficient to end up with  
2           some kind of conclusion. How much effluent is going  
3           to be produced? What type of system are they going  
4           to use? I mean, they can say whatever they want to  
5           say, but once we pass this out that all disappears  
6           into the ether. It's not in writing anywhere. We  
7           don't have an analysis to attach to this to make  
8           sure that that's what happens. If you look at the  
9           Planning Department reports, both the reports, the  
10          one they did in 2000, the one they did in 2001, you  
11          know, all it says, Members, is that they will do a  
12          private system, but it's not an analysis; it's just  
13          saying -- you know, actually they did say that  
14          they're going to do a private system back in 2000.  
15          Back in 2000 they -- I guess they never even  
16          intended then to connect to the Kihei Wastewater  
17          Reclamation Facility. The only reason that came up,  
18          Members, is because it is already a condition that  
19          was imposed in 1992 when they got their current  
20          zoning for the two golf courses and the park.

21                 So, you know, I'm not forcing anybody to do  
22                 anything that is unusual here. In fact -- maybe it  
23                 is unusual that -- that we follow the County Code,  
24                 Mr. Chairman. Maybe it is unusual. I leave it to  
25                 everybody's discretion.

1 CHAIR MOLINA: Thank you very much, Member Anderson.

2 Before the Chair calls for the votes, I'd  
3 like to give his comments.

4 Well, I don't think it's unusual for this  
5 Council to not have followed County Codes on other  
6 issues, so let me just first state that. So, it's  
7 not like it's anything new that we've bent the  
8 rules, if you will. So, I'll state that first.

9 You know, I think the amendment has good  
10 intentions. My question is, there seems to be the  
11 issue of setting a new precedent. And then another  
12 issue is are we Department of Health experts to make  
13 these determinations? If you're asking the Council  
14 to add another layer of bureaucracy, if you will,  
15 and more work, are we also maybe stepping -- going  
16 beyond our background boundaries of  
17 responsibilities? The agencies, generally it's  
18 considered an administrative responsibility. We're  
19 the legislative branch. So, that question exists  
20 for me.

21 And, also, it's up to us how much information  
22 we feel satisfied with. That's a call we all are  
23 going to have to make. It's either you want the  
24 information now; or if this zoning is approved, then  
25 do you want to wait for that information to be

1 presented by the Applicant with the Sewage Disposal  
2 Analysis and the agencies make their comments then?  
3 Now, my understanding is they do have to go before  
4 the Planning Commission for a Phase II district  
5 approval, and obviously if they don't meet the  
6 criteria, well, then they cannot continue on with  
7 their project should it be approved in the first  
8 place.

9 So, I just have too many uncertainties at  
10 this point for me to support it. But, again, this  
11 will be a call of the body. So, at this point the  
12 Chair will call for the vote.

13 All those in favor of the amendment as  
14 proposed by Member Anderson to delete Condition 16  
15 and 17 and replaced with the condition --

16 Staff, can we go ahead and read the condition  
17 for the record.

18 MS. NAKATA: Honua'ula Partners, LLC, its successors and  
19 permitted assigns, shall provide a Sewage Disposal  
20 Analysis that has been reviewed and commented on by  
21 the Department of Health and the Department of Land  
22 and Natural Resources of the State and the  
23 Departments of Environmental Management and Water  
24 Supply of the County prior to Phase II approval.  
25 The Sewage Disposal Analysis, along with reviews and

1           comments, shall be submitted to the Council for  
 2           review, and project shall be subject to additional  
 3           conditions or amendments by Council if warranted by  
 4           Sewage Disposal Analysis.

5           CHAIR MOLINA: Okay. Members, you've heard the amendment  
 6           read.

7                         All those in favor of the amendment signify  
 8           by saying "aye."

9           COUNCIL MEMBERS: "Aye."

10          CHAIR MOLINA: All those opposed?

11                         Chair votes no.

12                         So, we have one, two, three, four -- six  
 13          "ayes" and one "no," two excusals, Members Baisa and  
 14          Hokama. The amendment passes. So, we will have  
 15          Condition 16 and 17 deleted and replaced with the  
 16          condition proposed by Member Anderson.

17	<b>VOTE:</b>	<b>AYES:</b>	<b>Councilmembers Anderson,</b>
18			<b>Johnson, Mateo, Medeiros,</b>
19			<b>Victorino, and Vice-Chair</b>
20			<b>Pontanilla</b>
21		<b>NOES:</b>	<b>Chair Molina</b>
22		<b>EXC.:</b>	<b>Councilmembers Baisa and Hokama</b>
23		<b>ABSENT:</b>	<b>None</b>
24		<b>ABSTAIN:</b>	<b>None</b>

25          **MOTION CARRIED**

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

2       CHAIR MOLINA:   Okay.  Members, the Chair will call for a  
3                   15-minute recess, and when we come back we will deal  
4                   with two more conditions.

5                   Meeting in recess.  (*Gavel.*)

6       **RECESS:**       3:20 p.m.

7       **RECONVENE:**   3:40 p.m.

8       CHAIR MOLINA:  (*Gavel.*)  The recessed Land Use Committee  
9                   meeting of October 18th, 2007, is now back in  
10                  session.

11                  It is Monday -- excuse me, Thursday,  
12                  November 1st, 3:40 p.m.

13                  Members, the Chair is -- would like to  
14                  propose a condition.  Being that we removed  
15                  Condition 16 and 17, there's no condition currently  
16                  that indicates the Applicant will construct and  
17                  maintain a private wastewater treatment facility;  
18                  so, therefore, the Chair would like for your  
19                  consideration to incorporate a condition, and I'll  
20                  go ahead and read it out here.  Honua'ula Partners,  
21                  LLC, its successors and permitted assigns, shall  
22                  construct and maintain a private wastewater  
23                  treatment facility and system that accommodate the  
24                  needs of the entire project district.

25                  Okay.  Members, I shall -- I guess it would

1           be more appropriate for us to conduct a formal  
2           motion.

3                       Is there a motion to incorporate this  
4           condition?

5                       The Chair would ask for your consideration of  
6           that motion.

7   VICE-CHAIR PONTANILLA:  You want a motion, Chair?

8   CHAIR MOLINA:  Yes.

9   VICE-CHAIR PONTANILLA:  So moved.

10  COUNCILMEMBER VICTORINO:  Second.

11  CHAIR MOLINA:  Okay.  Moved by Member Pontanilla, seconded  
12           by Member Victorino.

13                       Any discussion, Members?

14                       Member Johnson, followed by --

15  COUNCILMEMBER JOHNSON:  I just want to understand.  This  
16           is in -- this is -- I mean, is this to substitute  
17           for 17?

18  CHAIR MOLINA:  No, no.  What we did in our last action, we  
19           removed Condition 16 and 17.

20  COUNCILMEMBER JOHNSON:  Oh, right.  I -- okay.

21  CHAIR MOLINA:  So, as of right now, there currently is no  
22           condition that makes the Applicant responsible to  
23           pay for and construct a --

24  COUNCILMEMBER JOHNSON:  Oh, okay, okay.

25  CHAIR MOLINA:  So, that's what I wanted your

1 consideration.

2 COUNCILMEMBER JOHNSON: All right. I understand.

3 CHAIR MOLINA: Okay. Any other discussion?

4 Not -- sorry, Member Anderson. My apologies.

5 COUNCILMEMBER ANDERSON: Thank you, Chair.

6 I will support that. You know, I think that  
7 the condition we just adopted, in that they have to  
8 provide their sewage disposal analysis, really kind  
9 of covers that. But just to be very succinct, I  
10 will support your amendment.

11 CHAIR MOLINA: Okay. Thank you very much, Member  
12 Anderson.

13 Any other discussion?

14 Seeing none, all those --

15 COUNCILMEMBER MEDEIROS: Chair?

16 CHAIR MOLINA: Mr. Medeiros, sorry.

17 COUNCILMEMBER MEDEIROS: Yeah, yeah. Can you repeat --

18 CHAIR MOLINA: Yes. The condition would read, Honua'ula  
19 Partners, LLC, its successors and permitted assigns,  
20 shall construct and maintain a private wastewater  
21 treatment facility and system that accommodates the  
22 needs of the entire project district.

23 COUNCILMEMBER MEDEIROS: Thank you, Chair.

24 CHAIR MOLINA: All right. Members, we all know what we're  
25 voting on?



1 related to infrastructural improvements. The matter  
2 was discussed on August 1st and August 8th. No  
3 consensus reached.

4 Planning Department, do you care to make any  
5 additional comments before the Chair opens the floor  
6 for questions, and ultimately some type of decision  
7 whether to move this condition on or not or consider  
8 amendments to it?

9 MS. SUYAMA: We have no additional comments.

10 CHAIR MOLINA: Okay. (End of side A, tape 2.)

11 You read my mind.

12 Staff, can you go ahead and read the  
13 condition in column 4, Condition Number 4 under  
14 Infrastructural Improvements.

15 MS. NAKATA: Honua'ula Partners, LLC, its successors and  
16 permitted assigns, shall be responsible for all  
17 required infrastructural improvements for the  
18 project, including water source and system  
19 improvements for potable use and fire protection,  
20 drainage improvements, traffic-related improvements,  
21 wastewater system improvements, and utility upgrades  
22 as determined by the appropriate governmental  
23 agencies and public utility companies. Said  
24 improvements shall be constructed and implemented  
25 concurrently with the development of each phase of

1 Kihei-Makena Project District 9 and shall be  
2 completed prior to issuance of any certificate of  
3 occupancy or final subdivision approval unless  
4 improvements are bonded by Honua'ula Partners, LLC,  
5 its successors and permitted assigns. Honua'ula  
6 Partners, LLC, shall execute appropriate agreements  
7 with governmental agencies regarding participation  
8 in improvements of infrastructure and public  
9 facilities as determined by the agencies.

10 CHAIR MOLINA: Okay. Thank you, Staff.

11 Committee Members, any questions for the  
12 Department or any proposals to amend the condition?  
13 Member Anderson?

14 COUNCILMEMBER ANDERSON: First off, I think we should  
15 add -- where it says potable use, we should add  
16 potable and non-potable use.

17 CHAIR MOLINA: Okay.

18 COUNCILMEMBER ANDERSON: That's right up top, including  
19 water source system improvements for potable use and  
20 fire protection.

21 CHAIR MOLINA: Oh, okay.

22 Members, we all know where we're at?

23 This will be the third -- sixth -- seventh  
24 line down, where you see potable underscored.

25 And you would like to incorporate potable use

1           and non-potable use; is that correct, Ms. Anderson?

2           COUNCILMEMBER ANDERSON: Yeah. I mean, I think we should  
3           be inclusive to make sure that that is included.

4           CHAIR MOLINA: Okay. So, we'll be inserting the words  
5           "non-potable" after the word "and" -- and also the  
6           word "use," I presume, yeah -- potable use and  
7           non-potable use.

8           COUNCILMEMBER ANDERSON: Thank you, Chair.

9                           And then where it says -- and then it goes on  
10           to say, and fire protection, drainage improvements,  
11           traffic-related improvements, I think that we need  
12           to -- you know, we got a consensus last time we met,  
13           or the time before or whenever it was, on Page 2,  
14           Condition 2, column 4, that Piilani Highway from  
15           Kilohana to Wailea Ike Drive shall be upgraded to  
16           four lanes of traffic. The improvements shall be  
17           completed prior to issuance of grading for the site.  
18           We got a consensus on that. And then during a  
19           break, I spoke with Mr. Jencks and Mr. Goodfellow  
20           and they were going to provide me with a condition  
21           that would allow them to do onsite work, where they  
22           don't need to be traversing Piilani Highway. You  
23           know, because I'm saying prior to the issuance of  
24           grading so that -- specifically that we didn't have  
25           truckloads of dirt coming down Piilani Highway for

1 grading of the golf course, which I'm assuming would  
2 be the first thing that they would be doing, and,  
3 so, they asked maybe if we could allow them to do  
4 onsite work while they're constructing widening  
5 Piilani to Kilohana, where they wouldn't have to be  
6 bringing trucks down Piilani Highway, and I wouldn't  
7 have an objection to that. So, I just think we need  
8 to be careful that we're not approving a condition  
9 that would contradict something that we've already  
10 got a consensus on.

11 CHAIR MOLINA: Okay. Condition 2 which you're referring  
12 to, I don't believe we had a strong consensus for  
13 it. I know there was the additional language you  
14 were considering. So, we can go back to Condition  
15 2, as well, Member Anderson.

16 COUNCILMEMBER ANDERSON: There was a consensus,  
17 Mr. Chairman, but there was not -- it was not  
18 treated as an amendment.

19 CHAIR MOLINA: Uh-huh.

20 COUNCILMEMBER ANDERSON: And I know that you made a  
21 comment that down the road we might want to have to  
22 do this as an amendment.

23 CHAIR MOLINA: Right, uh-huh.

24 COUNCILMEMBER ANDERSON: But since there was a consensus,  
25 I think we need to consider this if we're looking at

1 another condition that contradicts that.

2 CHAIR MOLINA: Okay. Well -- well, what is the pleasure  
3 of the body?

4 We could address 4 and then go back to 2.

5 Let me ask Staff what might be the best way  
6 to approach this.

7 Ms. Nakata, do you have any comments right  
8 now on how to best -- could we address Condition 4  
9 first and then go back to 2 and insert the  
10 consideration from Mr. Anderson, as well as consider  
11 the Applicant's proposal?

12 Okay. So, it's -- we're fine in doing 4  
13 first?

14 Okay. Member Anderson, we'll go back to 2  
15 after we're done with 4.

16 So, for now, we're looking at -- let's see --  
17 inserting the words "non-potable use" --

18 COUNCILMEMBER ANDERSON: And, Mr. Chair, the reason I have  
19 a problem with traffic-related improvements, you  
20 know, there's a whole list of things that they're  
21 responsible for, but it then goes on to say that  
22 said improvements shall be constructed and  
23 implemented concurrently with the development of  
24 each phase of Kihei-Makena Project District 9 and  
25 shall be completed prior to issuance of any

1 certificate of occupancy or final subdivision  
2 approval unless improvements are bonded. You know,  
3 that -- there's a lot of if, ands, or buts involved  
4 here that doesn't give us any real clear indication  
5 of when these improvements are going to be done.  
6 Because if you -- you know, when you're doing  
7 subdivision and you bond your improvements -- what  
8 we're asking is each phase shall be completed prior  
9 to the issuance of any certificate or final  
10 subdivision approval. You can get final subdivision  
11 approval by just bonding the improvements without  
12 actually putting them in the ground and then start  
13 selling off lots with no improvements completed at  
14 all. And, so, I think that's a very dangerous  
15 condition to allow -- you know, I mean, if they want  
16 to bond it -- you know, that -- that is a financial  
17 advantage to the developer because that means they  
18 don't have to expend the monies necessary to do the  
19 actual improvements in the ground before they get  
20 their final subdivision approval; and what that  
21 allows them to do is to sell the lots in the  
22 subdivision that are only on paper and, you know,  
23 without having to construct the improvements. And,  
24 you know, I don't have a problem with the phasing,  
25 because I don't think it's really fair to ask them

1 to put in all the improvements, you know; but if  
2 they're only going to do it 100 units a year, so,  
3 you know, how many ever phases that would be if  
4 they're doing 1400 units at a 100 units a year, that  
5 would be, in my estimate, 14 one-year phases. But  
6 we -- that's something else I would like to see us  
7 call out as a condition, that, you know, they have  
8 represented to us and represented -- represented to  
9 the Planning Commission all through this process  
10 that they were going to build this out at 100 units  
11 per year, so we should hold them to do, because all  
12 the traffic analysis and everything else is based on  
13 that build-out timing. So, somehow we need to tie  
14 that down in the conditions.

15 And I think the way this condition reads,  
16 it's just too vague. I mean, shall be completed  
17 prior to issuance of any certificate of occupancy or  
18 final subdivision approval unless improvements are  
19 bonded, that means they don't have to do it. That  
20 means they can do it whenever they want. They can  
21 sell off the lots, sell off the whole project to  
22 somebody else and then do the improvements after the  
23 fact; and maybe somebody else will come in and  
24 decide they want to develop 500 units in one year,  
25 and then all the impacts that were anticipated and

1           supposedly mitigated will also be thrown off.

2 CHAIR MOLINA: Okay. Members, any comments?

3           Mr. Hokama?

4 COUNCILMEMBER HOKAMA: Chairman, we might want to do what  
5           our sister counties in Virginia and I believe also  
6           Texas, especially when we were there for our annual  
7           conference, there were two large projects being  
8           reviewed for Virginia, about 2500-unit projects.  
9           There the developer agreed with the municipality,  
10          whether it was the City or the County, that they  
11          would complete all road improvement requirements  
12          prior to the construction of homes, because it was  
13          one way to alleviate and take away the pressure of  
14          the road system during construction. I don't have a  
15          problem with requiring that all road improvements be  
16          done prior to any other portion of the project. And  
17          it's -- I think it's something that we could  
18          definitely point out to saying that that portion of  
19          the infrastructure requirements are then sufficient  
20          to handle the expansion within the area. We've  
21          always been told we were behind the curve on  
22          infrastructure. Well, this is a way to address it  
23          so that we're ahead of the curve, Mr. Chairman, and  
24          I think it's something we should consider. That's  
25          why we're in development in this County, the

1 maturity of this County, that we need to have  
2 certain things up front for the community's benefit  
3 first prior to the development's needs.

4 Thank you.

5 CHAIR MOLINA: Thank you, Mr. Hokama.

6 Member Johnson?

7 COUNCILMEMBER JOHNSON: Yes. If you look back on Page 2  
8 of 14, it says improvements shall be constructed  
9 prior to occupancy of the first unit in the project  
10 district. And, essentially, another way I interpret  
11 that is that -- that's what Chair Hokama is  
12 essentially saying, is that before you get to, you  
13 know, occupy your units, all of these improvements  
14 have to be made. Now, he may be going back even  
15 farther to say that prior to any construction of any  
16 of those units, because the construction phase would  
17 have its own set of traffic concerns. That, to me,  
18 is something that I think we should think about.

19 COUNCILMEMBER ANDERSON: Ms. Johnson, could you tell us  
20 where you're at?

21 COUNCILMEMBER JOHNSON: Okay. I'm going back to Page 2 of  
22 14, and it's where -- it's in the final column. It  
23 says, 2, Honua'ula Partners, LLC, its successors and  
24 permitted assigns, shall implement the following  
25 traffic improvements, and then almost every one of

1           those says that the improvements must be completed  
2           before occupancy of the first unit in the project  
3           district. So, you know, some of the signals are  
4           when warranted.

5                        But, basically, I think, Mr. Chair, if we can  
6           tie in the Condition Number 4 and refer back to  
7           Condition Number 2, I think at least we'll have  
8           consistency. Because if there was consensus on  
9           that, you know, it's just -- it's -- I have the same  
10          concern that Member Anderson does about the bonding.  
11          Because if we're tying that in, then I think that we  
12          should, you know, just be as conservative as  
13          possible. And if this language was already agreed  
14          upon, or in principle agreed upon by Members, then I  
15          think we should just refer back to that rather than  
16          just reiterating it and having confusion. So,  
17          that's just a thought.

18                        Thank you, Mr. Chair.

19          CHAIR MOLINA: Thank you. It might help someone.

20                        Member Anderson?

21          COUNCILMEMBER ANDERSON: Yeah, just for clarification.

22                        And I don't think Member Johnson was here  
23          when we discussed this consensus.

24                        I'm changing it from prior to occupancy to  
25          prior to issuance of grading permit, and I think

1           that is what Mr. Hokama is saying. Because if we  
2           say prior to occupancy for any of these conditions  
3           or any of these improvements, that means there's a  
4           whole lot of work going on and construction going on  
5           with none of this being done. You know, the whole  
6           phase is built before occupancy. So, you know, if  
7           we want these roadway improvements done prior to  
8           construction of the rest of the project, we have to  
9           call it out that way.

10       CHAIR MOLINA: Okay.

11                       All right. Now, the question is where do we  
12           insert this proposed language to amend?

13       COUNCILMEMBER JOHNSON: Mr. Chair?

14       CHAIR MOLINA: Would it be better in 4 or 2?

15       COUNCILMEMBER JOHNSON: Mr. Chair, I --

16       CHAIR MOLINA: Councilmember Johnson?

17       COUNCILMEMBER JOHNSON: My suggestion is going to be that  
18           we tailor Number 4 to go back to -- or at least be  
19           consistent -- because if you reference the -- well,  
20           of course, that's only traffic, though, and because  
21           there are other things that are contained -- I  
22           guess -- well, yeah, because you have just traffic,  
23           you have water source, you have all these other  
24           things. I don't know. I would tie it, though,  
25           then, at least to -- referring back to as far as

1 transportation or traffic goes to Number 2. And  
2 then if we look back at the conditions that relate  
3 to water or any of these other things, if we can tie  
4 it back into that so that we're not leaving it where  
5 it might be inconsistent with something that we've  
6 already passed. So, I have no problem with, you  
7 know, the recommendation, basically, that Member  
8 Anderson and also Chair Hokama are making, that --  
9 you know, so that we have an assurance that we  
10 actually have the infrastructure. Almost all of the  
11 developments on the mainland, I have been told, if  
12 you want to do it, this is what has to take place,  
13 including the school construction. They say, fine,  
14 if this is what you want, we don't care how it gets  
15 done, you figure it out with the other developers in  
16 the area; but unless we get this level of service,  
17 unless we have schools for our children, unless we  
18 have adequate water, you can't go forward. So, you  
19 know, that -- that's the reality, unfortunately, but  
20 that's what we're going to have to do. So, I don't  
21 know, maybe this one's going to require a little bit  
22 of work.

23 CHAIR MOLINA: Yeah, maybe we need to work with Staff.

24 And it's too bad this philosophy wasn't incorporated  
25 a lot sooner in Maui County's history; maybe we

1           would have had a lot of our infrastructure problems  
2           alleviated.

3                         Mr. Pontanilla?

4         VICE-CHAIR PONTANILLA:   Yeah.   Thank you.

5                         I do have a note over here that Condition  
6           Number 2, the last column, all of the things that  
7           are noted -- and I think at the time -- we had  
8           consensus in regards to having all of these road  
9           improvements completed before grading can begin in  
10          the development.

11         CHAIR MOLINA:   Yeah.

12                         I think Member Anderson touched upon that  
13           earlier, too, yeah?

14                         Yeah, okay.

15                         Members, would you like a little time to kind  
16           of work -- maybe we can work with Staff and then  
17           craft the appropriate language into the condition?

18                         Member Anderson?

19         COUNCILMEMBER ANDERSON:   Chair, if I could just -- you  
20           know, for the record here, if Members are amenable  
21           to making this condition, such as Chair Hokama  
22           mentioned and myself, I just want people to be aware  
23           that we have justification for this, because in the  
24           Kihei-Makena Community Plan, under Provisions for  
25           Needed Public Facilities and Infrastructures, it

1           says over and over and over again that  
2           infrastructure shall be concurrent with development.  
3           And it also calls out that we had, you know,  
4           significant growth in the '80s and '90s and -- which  
5           caused infrastructure and public facilities to lag  
6           behind development in the region. As such, a  
7           significant upgrade and expansion of existing public  
8           facilities and infrastructure is necessary. Upon  
9           adoption of this plan, it shall be required that  
10          adequate facilities and infrastructure will be built  
11          concurrent with future development. The land use  
12          designations on the community plan map are not an  
13          assertion that infrastructure will be provided to  
14          these areas but merely that what it -- that it would  
15          be appropriate to develop these areas as designated  
16          on the maps, if the necessary infrastructure and  
17          services are available.

18                 So, I think that gives us more than enough  
19          justification, since we're supposed to be following  
20          the community plan in all of our land use changes,  
21          upon adoption of this plan, allow no further  
22          development unless infrastructure, public  
23          facilities, and services needed to service new  
24          development are available prior to or concurrent  
25          with the impacts of new development.

1 Thank you, Chairman.

2 CHAIR MOLINA: Okay. Thank you, Member Anderson, for that  
3 insight.

4 All right. Committee Members, let me confer  
5 with Staff.

6 Staff, do you need some time to incorporate  
7 the recommendations?

8 I know we've been bouncing back between  
9 Conditions 2 and 4. Let's maybe keep it -- let's  
10 try and simplify this.

11 Do you need some time, like take a short  
12 break and we can confer with the Members?

13 MS. NAKATA: Yes. If Staff could just clarify if the  
14 Members would be satisfied with something along the  
15 lines of an exception at the front end of the second  
16 sentence, something along the lines of, you know,  
17 unless more specifically provided --

18 CHAIR MOLINA: Is this -- you're talking about Condition  
19 4; right?

20 MS. NAKATA: Yes.

21 CHAIR MOLINA: Okay. Go ahead.

22 MS. NAKATA: Unless more specifically provided by another  
23 condition, something along those lines, that's  
24 finessed.

25 COUNCILMEMBER ANDERSON: Could you finish the sentence?

1 CHAIR MOLINA: You want to go ahead and --

2 MS. NAKATA: At the front end of the second sentence, that  
3 starts, Said improvements shall be constructed and  
4 implemented concurrently with the development of  
5 each phase. I'm just not clear if that's what the  
6 Members are getting at, so that --

7 COUNCILMEMBER ANDERSON: No, that isn't --

8 CHAIR MOLINA: Members, you know what, let's go ahead and  
9 take a short break and work --

10 COUNCILMEMBER ANDERSON: -- talking about prior to  
11 construction.

12 CHAIR MOLINA: Yes, Mr. Pontanilla, followed by  
13 Mr. Victorino.

14 VICE-CHAIR PONTANILLA: Why don't you just move  
15 traffic-related improvements into Condition  
16 Number 2?

17 CHAIR MOLINA: Traffic-related improvements into Condition  
18 Number 2.

19 At what point, Mr. Pontanilla?

20 There's a number of letters, 2a, 2b, 2c.

21 VICE-CHAIR PONTANILLA: Well, when you read Condition  
22 Number 4, Infrastructural Improvements, this one  
23 issue here, traffic-related improvements, and here  
24 we're talking about in Condition 2, only traffic  
25 conditions, why not just add it in there?

1 COUNCILMEMBER ANDERSON: In other words, take it out of 4  
2 entirely?

3 VICE-CHAIR PONTANILLA: Yeah, take it out of 4, put it  
4 into 2.

5 COUNCILMEMBER ANDERSON: And just use 2 as the traffic  
6 condition?

7 VICE-CHAIR PONTANILLA: Right.

8 CHAIR MOLINA: Okay. So, we'll basically take out the  
9 issue of traffic from Condition 4, leave wastewater  
10 and utility upgrades and everything else in  
11 Condition 4?

12 VICE-CHAIR PONTANILLA: Yep.

13 CHAIR MOLINA: All right. Staff, is that clear enough?

14 MS. NAKATA: Yes. I'd like to double-check with the  
15 planners as to whether any of these other  
16 infrastructural improvements had contradictory  
17 timing requirements.

18 CHAIR MOLINA: Okay. Chair wants to take a recess.

19 But before we do that, Mr. Victorino, you had  
20 your hand up.

21 COUNCILMEMBER VICTORINO: That was my exact suggestion.

22 CHAIR MOLINA: All right.

23 COUNCILMEMBER VICTORINO: Take that out and let's make it  
24 concurrent with one.

25 CHAIR MOLINA: Okay.

1 All right. Members, let's recess this  
2 meeting until 4:15 to confer with the Planning  
3 Department and Staff.

4 Meeting in recess. (*Gavel.*)

5 **RECESS:** 4:05 p.m.

6 **RECONVENE:** 4:22 p.m.

7 CHAIR MOLINA: (*Gavel.*) Recessed Land Use Committee  
8 meeting of October 18th, 2007, is now back in  
9 session.

10 It is Thursday, November 1st, 4:22 p.m.

11 Thank you, Members, for that extended break.

12 We do have a somewhat complex proposal to  
13 amend involving Conditions 4 and possibly  
14 Condition 2. We've tried to sort through this as  
15 best as we could. At this point I'd like to ask the  
16 Deputy Planning Director to give additional comment  
17 before I go to Staff to try and clarify some of the  
18 considerations that have been made by some of the  
19 Members of the body.

20 Deputy Director?

21 MS. SUYAMA: Relative to this condition, we would  
22 recommend that you keep traffic-related improvements  
23 in the condition because this is a long-term project  
24 that's going to happen over a number of years.  
25 Like, you're talking about maybe 10, 20 years to be

1 developed. And as the times change, traffic  
2 improvements, requirements may change, also. So,  
3 with this condition, it's -- you know, it's obvious  
4 that if the situation changes as the project is  
5 being reviewed, they still need to provide whatever  
6 these other traffic-related improvements may be  
7 concurrently with the development as it occurs.

8 The other question that we had is, that right  
9 now we're saying that unless improvements are bonded  
10 by Honua'ula Partners, LLC -- my understanding is  
11 that the subdivision ordinance does allow bonding of  
12 improvements in order to get final subdivision  
13 approval as part of Title 18. We on the other hand,  
14 in terms of occupancy, you know, we normally --  
15 because they allow bonding for -- you know, through  
16 Public Works, we normally would issue a certificate  
17 of occupancy as long as the bond was provided that  
18 ensures that the improvements are to be constructed.  
19 It may be more critical in terms of the occupancy  
20 permit not to allow bonding in terms of having the  
21 improvements actually constructed before they get  
22 the certificate of occupancy, because that -- at  
23 that point you are occupying a building and you are  
24 going to be generating whatever infrastructure needs  
25 at that point in time. So, you may want to just say

1           that certificate of occupancy, you know, and take  
2           out the provisions for bonding for certificate of  
3           occupancy. That would be our, you know,  
4           recommendation.

5       CHAIR MOLINA: Okay. And for the record, bonding isn't  
6           optional; right?

7       MS. SUYAMA: My understanding is it's not optional for the  
8           subdivision -- final subdivision approval. But I  
9           believe it's not required in terms of where, you  
10          know, somebody bonds an improvement that you need to  
11          issue the certificate of occupancy.

12       CHAIR MOLINA: Okay. Thank you for that clarification.

13                       Staff, can you go ahead and try as best you  
14                       can to address some of the proposals that have been  
15                       made?

16       COUNCILMEMBER ANDERSON: Can I make a comment first,  
17           Chair?

18       CHAIR MOLINA: Hang on, Member Anderson, let me just  
19           organize Staff in this case, and I'll come back to  
20           you.

21                       Ms. Nakata?

22       MS. NAKATA: Staff would just note that according to the  
23           Deputy Planning Director, there is a wider universe  
24           of traffic-related improvements that may need to be  
25           made to the project areas and those that are

1 specifically covered under Condition Number 2; and  
2 for that reason, the Committee may wish to consider  
3 retaining traffic-related improvements in Condition  
4 Number 4 and just accepting prior to the start of  
5 the first sentence as follows: Except as otherwise  
6 provided by more specific conditions of zoning, said  
7 improvements shall be constructed and implemented  
8 concurrently, something along those lines.

9 The other consideration was that there may be  
10 more infrastructure improvement conditions since we  
11 haven't yet completed evaluation of the various  
12 conditions of zoning that have specific timing  
13 requirements that may contradict those that are set  
14 forth in Condition 4, and for that reason we'd keep  
15 it broader then referring simply to Condition  
16 Number 2.

17 CHAIR MOLINA: Okay. Ms. Nakata, can you back up a little  
18 bit. Your opening remarks made reference to the  
19 Deputy Planning Director's recommendation, and you  
20 mentioned in the first sentence -- can you go over  
21 that other recommendation. Just -- you were going a  
22 little fast for some of us. At this time of day our  
23 brains are fried, so if you could go at a little  
24 slower pace.

25 MS. NAKATA: Just that the universe of traffic-related

1 improvements may be broader than those that are  
2 covered specifically in Condition Number 2, and for  
3 that reason we -- the Committee may want to consider  
4 retaining the reference to traffic-related  
5 improvements in Condition Number 4.

6 CHAIR MOLINA: Right, I know. Yeah, we went over that  
7 part. But then you mentioned something else after  
8 that which was related to, I guess, sentence 1. I  
9 assume Condition 4.

10 MS. NAKATA: The revision was related to sentence 2 --

11 CHAIR MOLINA: Okay.

12 MS. NAKATA: -- to add a phrase, except as otherwise  
13 provided by more specific conditions of zoning.

14 CHAIR MOLINA: Okay.

15 All right. Everybody clear on that?

16 Mr. Victorino, you -- I saw your hand go up,  
17 but you had this -- I know the feeling.

18 COUNCILMEMBER VICTORINO: Okay. No, I understand --

19 CHAIR MOLINA: You need additional clarification?

20 COUNCILMEMBER VICTORINO: I understand where it is --  
21 where it goes.

22 Thank you, sir.

23 CHAIR MOLINA: Okay.

24 All right. Member Anderson?

25 COUNCILMEMBER ANDERSON: Yeah, just for clarification,

1 Chair.

2 We also had a consensus on the potable  
3 water --

4 CHAIR MOLINA: Potable and non-potable use; right.

5 COUNCILMEMBER ANDERSON: No. We have another condition in  
6 here that the other day we got a consensus on  
7 regarding doing a -- getting approval of the water  
8 system; in other words, prove you got water prior to  
9 Phase II and, you know, also allowing the Council an  
10 opportunity to review that. And I'm sorry, I don't  
11 know exactly which condition it is right now. I  
12 have it on another one. So, we might want to make  
13 an exception there, also.

14 But I wanted to point out that -- and I've  
15 spent a lot of time in the last two weeks discussing  
16 bonding of subdivisions in regards to the water  
17 availability bill that we're going to be discussing  
18 tomorrow, both with the -- with Staff of the Public  
19 Works Department and also with the Director of  
20 Public Works, meeting again with him yesterday and  
21 today, so I'm not speaking without some knowledge on  
22 this. We've discussed bonding in depth. And  
23 bonding is only an option. Either you -- either you  
24 put all the improvements in that are called out for  
25 the subdivision, that have been approved on the

1 construction plans by the Public Works Department  
2 and the Department of Water Supply, that have been  
3 sent out for review from agencies, either you put  
4 all those construction improvements into your  
5 subdivision in order to get final subdivision  
6 approval or you can provide a surety bond that  
7 covers the cost of all those improvements, thereby  
8 guaranteeing that you will do the improvements or  
9 the County can call the bond and have the  
10 improvements done themselves. So, you don't have to  
11 do the improvements in the ground if you're bonded;  
12 but what happens is, you get final subdivision  
13 approval without putting in the improvements and  
14 then you're allowed to record the subdivision and  
15 sell the lots. So, I just want everyone to  
16 understand that that's how it works, and that's why  
17 we have problems with water, because they're selling  
18 off the lots without a guaranteed source of water.  
19 And that makes it very difficult for the County when  
20 they've got 3 or 400 lot owners who want to build  
21 and they still don't have water.

22 But the other thing is, that prior to  
23 issuance of any certificate of occupancy,  
24 certificates of occupancy are not required for  
25 residential units. It's not a requirement of Title

1 18 to get a certificate of occupancy. So, I think  
2 we need to look at different language. You do have  
3 to have inspection. But all of that happens, you  
4 know, after you've already done your construction.  
5 So, I don't think certificate of occupancy would  
6 apply. It would -- about the only thing a  
7 certificate of occupancy would be required for in  
8 their project would be the golf clubhouse.

9 So, you know, I think that this is a very  
10 important condition, Mr. Chairman, and it's  
11 extremely convoluted, and it's difficult to read as  
12 it is because we have things added and things we're  
13 taking out and new things we're adding, and I would  
14 hope that we could -- before we make any consensus  
15 or vote on this we could see the condition in its  
16 entirety, typed out for us, so that we're not  
17 confused as to what we're doing here.

18 CHAIR MOLINA: Okay. Thank you. That's a very good  
19 consideration.

20 Member Hokama?

21 COUNCILMEMBER HOKAMA: Chairman, thank you.

22 It is my understanding from listening just  
23 previously to Deputy Planning Director Suyama, that  
24 her comments regarding the bonding was one way to  
25 address it. And with your indulgence, Mr. Chairman,

1 I would ask if the Deputy would be kind enough to  
2 restate her comments regarding the bonding component  
3 of Condition 4, please.

4 CHAIR MOLINA: Director?

5 MS. SUYAMA: Normally what happens is that when people  
6 come in and ask...(end of side B, tape 2)...a lot of  
7 times -- and this includes even SMA permits to meet  
8 compliance -- they will come in and say that, we  
9 will bond the improvements to ensure that  
10 construction of the improvements are done, because  
11 the bond would be the surety that, you know, these  
12 improvements would be completed; and based upon  
13 that, the certificate of occupancy or the compliance  
14 report for an SMA permit are issued so that they can  
15 go, you know -- continue with the procedures of  
16 getting the project, you know, either occupied or to  
17 complete getting their final compliance reports  
18 done.

19 My understanding is -- when we read the  
20 portion of the subdivision ordinance, it talked  
21 about, you know, the Director can under final  
22 subdivision go into a surety bond with the developer  
23 in order to, you know, give final subdivision  
24 approval. It's more critical to me during the time  
25 of occupancy of a unit that the improvements have

1           been completed rather than at the subdivision level  
2           because then you actually have people occupying the  
3           units.

4                       Councilwoman Anderson is correct, that  
5           single-family residences normally are not required  
6           to get a certificate of occupancy unless it's deemed  
7           that you need to get one. And, you know, one of the  
8           ways is that, although you're saying shall be  
9           complied -- completed prior to issuance of any  
10          certificate of occupancy, including -- you might  
11          have a provision that including single-family  
12          dwellings shall obtain a certificate of occupancy so  
13          it's clear that regardless of whether you need one  
14          or not, the zoning condition requires you to get a  
15          certificate of occupancy, even for a single-family  
16          dwelling; and at that point, if you have not done  
17          concurrency, you would not be issued the permit to  
18          occupy the units. That's another way that you  
19          can -- another thing that the Commission -- the  
20          Council can consider.

21       COUNCILMEMBER HOKAMA: Thank you for the comment, Deputy  
22       Director Suyama.

23                       But my understanding from your comments  
24           earlier, also, was that, Mr. Chairman, because we  
25           are crafting an ordinance, in general, already in

1           our Code is the ability to have certain improvements  
2           bonded to satisfy the County's requirement. I would  
3           say that we can also consider eliminating that  
4           option in this ordinance, that if we want the  
5           improvements, it has to be completed. Bonding will  
6           not satisfy that requirement. Because we are  
7           crafting another ordinance specific to this project.  
8           And, you know, we've done it in the past, we can do  
9           it again, to craft specific ordinance language just  
10          for this project. And I wouldn't have any problems  
11          removing the option of having it bonded so that it  
12          is completed, which is our intent.

13                         Thank you, Chairman.

14         CHAIR MOLINA: Okay. Thank you, Mr. Hokama.

15                         Members, Chair would like to -- Member  
16                         Anderson?

17         COUNCILMEMBER ANDERSON: Yeah, I think the language -- I  
18                         think the language we want is not certificate of  
19                         occupancy but -- and I'm reading it right out of the  
20                         Code, and this is in the section where they talk  
21                         about bonding -- subdivision improvements shall not  
22                         be considered complete and acceptable for final  
23                         approval by the Director until such improvements are  
24                         so certified in writing, to be complete and of  
25                         acceptable standards by the Director of Public Works

1           and/or the Director of Water Supply. So, I think  
2           what we want is -- the language we want if we're  
3           going to go with this -- which I'm not so happy to,  
4           but -- certification by the Director of Public  
5           Works.

6           CHAIR MOLINA: Okay. Members, Chair's going to recommend  
7           a recess. What I'd like Members Hokama, Member  
8           Johnson, and Member Anderson to do is maybe work  
9           with Staff. I'd like this -- I don't know about  
10          you, but I've got a whole bunch of chicken scratch  
11          on this condition. It's really, at times, very  
12          difficult to follow. And I see Mr. Victorino  
13          nodding his head. So, I'd like you guys to work  
14          with Staff. We'll insert all of your proposed  
15          amendments into the condition, in writing, and then  
16          every Member gets a copy and then we can comment on  
17          it, because it's becoming increasingly difficult to  
18          keep adding things and it's a very complex  
19          condition.

20                         So, Staff, how much time would you like?

21                         Maybe 15, 20 minutes?

22                         Mr. Hopper?

23           MR. HOPPER: I just want to note, Committee Members --

24           CHAIR MOLINA: Yes, yeah, we'll have --

25           MR. HOPPER: Okay.

1 CHAIR MOLINA: No more than two Members working with  
2 Staff.

3 COUNCILMEMBER HOKAMA: Only if we was the Legislature,  
4 Chairman, can we do it that way.

5 CHAIR MOLINA: That's right. Unfortunately we're not the  
6 Legislature, so we've got to abide by the Sunshine  
7 Law rules, which they apply to us. So, again, no  
8 more than two Members working with the Staff to  
9 incorporate the amendments to the condition.

10 Member Anderson?

11 COUNCILMEMBER ANDERSON: I would defer to the Chair and  
12 give him first shot.

13 CHAIR MOLINA: Okay. Mr. Hokama, you have that privilege.

14 COUNCILMEMBER HOKAMA: Thank you, Chairman.

15 CHAIR MOLINA: Okay. Members, let's recess until 4:55.

16 Is that satisfiable to the body?

17 Okay. Meeting in recess until 4:55.

18 (*Gavel.*)

19 **RECESS:** 4:37 p.m.

20 **RECONVENE:** 5:10 p.m.

21 CHAIR MOLINA: (*Gavel.*) The recessed Land Use Committee  
22 meeting of October 18th, 2007, is now back in  
23 session.

24 It is Thursday, November 1st, ten minutes  
25 after 5:00 o'clock.

1                   Members, I know we're getting close to that  
2                   zero hour where we're going to lose quorum.

3                   You have Staff currently in the process of  
4                   making copies of the amendments to Condition 4.  
5                   While we await the copies, I have had a request to  
6                   have the Applicant comment on the considerations  
7                   being made to Condition 4.

8                   Mr. Jencks?

9                   MR. JENCKS: Thank you, Mr. Chair.

10                   If I can just speak to you as a person having  
11                   experience with the process of subdividing land and  
12                   also going through the process of actual onsite  
13                   construction of improvements, as well as the option  
14                   of bonding subdivisions for either residential or  
15                   commercial or industrial properties, and  
16                   administering the process for the County of Maui.

17                   I heard a couple things prior to the recess  
18                   with regard to this issue, and one of the things I  
19                   heard was the concern with regard to allowing people  
20                   to occupy buildings prior to the improvements being  
21                   completed. And I can tell you from firsthand  
22                   experience in this County, especially with the  
23                   Department of Public Works and the Fire Department,  
24                   unless landscaping is completed, unless roadways are  
25                   completed, unless parking is completed, unless fire

1 flow hydrants, fire flows checked, buildings  
2 numbered, and any structure that requires a  
3 certificate of occupancy, you cannot -- they will  
4 not allow you to occupy unless the improvements that  
5 are specified in the construction plans are  
6 completed, bonded or not, you can't occupy that  
7 structure. If your concern is the single-family  
8 component, then one way to solve that problem very  
9 simply is to say, we require a certificate of  
10 occupancy for single-family dwellings.

11 I'll give you a good example. What  
12 Mr. Spencer built in Waikapu, that was a bonded  
13 subdivision, okay. He's building that  
14 subdivision -- go by and look at it. It's being  
15 built incrementally. By bonding, it allows him to  
16 do that, save time, save money, and deliver product,  
17 in this case affordable product, on a very rational  
18 basis. He knows exactly what he's got to do on the  
19 bonded final map, where all the improvements are,  
20 but he also knows with bonding he can sell lots but  
21 people can't occupy those homes until those  
22 improvements fronting those lots are completed. I  
23 can assure you this County does not allow you to do  
24 that and put the owners in jeopardy, or the mortgage  
25 in jeopardy. It doesn't happen. So, I would say to

1           you, if your concern is that specific issue --  
2           because we've already agreed -- we've already talked  
3           about, for example, the Piilani Highway, the issue  
4           of getting the highway done before we have any  
5           activity in the property. That's tough enough,  
6           because that pushes out our ability to concurrently  
7           build for affordable housing, let's say, the same  
8           time we're doing this highway. We can maybe wrestle  
9           that -- that issue with regard to reducing traffic  
10          through bussing or timing, whatever we can discuss,  
11          we can accomplish that. But when it gets to actual  
12          onsite subdivision of land and not allowing a  
13          landowner to bond so that he can get a leg up, sell  
14          a piece of land to a Jesse Spencer and allow him to  
15          start his work while I'm doing the site roadway,  
16          water, and sewer and get that all done at the same  
17          time -- it saves energy, saves time, saves money,  
18          and gets people into houses quicker -- I think  
19          you're really hamstringing the ability to provide  
20          housing.

21       CHAIR MOLINA: Members, questions?

22                   I think, Member Medeiros, you indicated --

23       COUNCILMEMBER MEDEIROS: Yeah, I had a question on  
24          bonding. I think Mr. Jencks answered it. Because  
25          listening to Deputy Director Suyama's discussion of

1 bonding, it seems like it gives the County and the  
2 developer an option that should be left open. If we  
3 remove it, then we don't have that option either  
4 way. So, I'm glad Mr. Jencks, you know, discussed  
5 the bonding part.

6 My other question was, if we require the road  
7 improvements to be done first -- and I'm assuming  
8 the road improvements would include Piilani Highway  
9 and the roadways within the project?

10 Okay. I see Member Anderson nodding.

11 That seems odd to -- I know in, you know, my  
12 experience with Public Works, to have a subdivision,  
13 put in the sidewalks, curbing, gutters, if that's  
14 what going be required, and then build the homes  
15 after, because the construction equipment is going  
16 to tear all that up just getting into the lots,  
17 doing the groundwork, doing the infrastructure work,  
18 and building the buildings. So, I just want the  
19 Committee to consider that, that it seems to be kind  
20 of not in the normal process of construction, and I  
21 just wanted to make that -- those comments.

22 Thank you, Mr. Chairman.

23 CHAIR MOLINA: Thank you, Mr. Medeiros --

24 COUNCILMEMBER ANDERSON: Chair?

25 CHAIR MOLINA: -- for enlightening us on that.

1 Member Anderson?

2 COUNCILMEMBER ANDERSON: Yeah, and I agree with him. You

3 don't -- you know, it's not the roadways within the

4 subdivision that are in question. It's all the

5 roadways outside of the subdivision that need to be

6 improved in order to take any additional traffic.

7 And they have agreements already with Wailea Resort

8 Company, for all their private roadways that need to

9 be improved. We've already discussed Piilani

10 Highway.

11 You know, to me, the question, you know, is

12 not bonding. I know it maybe sounded like that from

13 what I was saying. I was only trying to explain the

14 process. To me the question is, do these roadway

15 improvements -- and I don't mean the improvements

16 inside the subdivision. I mean all the improvements

17 necessary surrounding the subdivision before you do

18 the subdivision. And I think that was what Member

19 Hokama was getting at. All the improvements that

20 are necessary to absorb the additional traffic that

21 will happen once they start developing the project.

22 Because we're already maxed out. We're at a level

23 of service F, plus G, plus E. You can't get worse

24 than F, so we're as worse as you can get at peak

25 times, morning and afternoon, and that's with the

1 hotels letting people out in sequence, or starting  
2 their schedules in sequence. And my concern is that  
3 all of the ancillary roadways throughout Wailea,  
4 they can't take any more additional traffic. And  
5 once you start doing the improvements to Piilani,  
6 you're going to force all that commuter traffic and  
7 anybody else into one lane for both ways, and that  
8 means that all the ancillary roadways in Wailea are  
9 going to take the burden. And, so, what we're  
10 trying to do is reduce that burden as best as we can  
11 up front, before we allow any additional traffic,  
12 and that means construction traffic for building the  
13 subdivisions.

14 So, you know, I don't really have a problem  
15 with the bonding in itself, because for one thing,  
16 you know, we have -- we have, Members, the option in  
17 our conditional zoning to request that the project  
18 be bonded anyway so that should they don't build out  
19 the project as required and put the condition -- and  
20 implement all the conditions that we attach to this,  
21 then we have the option, if we have them bond this  
22 project through our Change in Zoning process to then  
23 call in the bond and make all those conditions  
24 happen anyway, whether they do it or not. So, you  
25 know, I'm just going to tell you right now -- I

1 mean, I don't know that the County's ever done this.  
2 Maybe it's done it in a couple of instances. But,  
3 you know, the purpose of the conditions, again, is  
4 to protect the public from the potential deleterious  
5 effects of the proposed use, and that the need for  
6 public service is created by the proposed use shall  
7 be fulfilled. The conditions to be imposed must  
8 have been performed prior to Council action on the  
9 rezoning amendments -- listen to that; that's in our  
10 Code, Members; I'm reading 19.510.050 -- or be  
11 enforceable by the County so as to ensure  
12 performance after Council action. The condition  
13 shall be fulfilled within the time limitations set  
14 by the Council; or if no time limitation is set,  
15 within a maximum of five years from the day of the  
16 ordinance is in effect. Such condition shall be set  
17 forth in the unilateral agreement -- blah, blah,  
18 blah -- we know all that -- blah, blah, blah --  
19 about, you know, recording the unilateral agreement.  
20 That shall be enforceable by the County. And then  
21 it says the Council may require a bond in a form  
22 acceptable to it, or a cash deposit, from the  
23 property owner or contract purchaser in such amounts  
24 as will ensure compliance with the condition imposed  
25 pursuant to this section. Such bond shall be posted

1           at the same time the agreement containing the  
2           conditions is recorded --

3                       That means the unilateral agreement which is  
4           required prior to first reading Chair, or second  
5           reading?

6   COUNCILMEMBER HOKAMA:   Second reading.

7   COUNCILMEMBER ANDERSON:   Second reading.

8                       -- and as recorded with the Bureau of  
9           Conveyances of the State.  Failure to fulfill any  
10          conditions on a zone change within the specified  
11          time limitations may be grounds for an enactment of  
12          ordinances to restore the zoning to the previous  
13          zoning district or initiate a claim on the bond.

14                      So, if we bond this project, then we are  
15          protecting ourselves and the public should  
16          Mr. Jencks get his entitlement, sell off different  
17          portions of his project to different entities, and  
18          one or more entity bails and doesn't want to  
19          continue.  I mean, we've already heard that he can't  
20          downsize this because it wouldn't make the economics  
21          of all the infrastructure feasible.  So, we're  
22          taking a chance, if we don't bond this, that maybe  
23          it won't happen.  Maybe, you know, somebody will  
24          just do a portion of the project.  And that's why I  
25          think we want some of this infrastructure done

1           upfront before any subdivision of the lots for same  
2           is done. So, I just bring that to the Members'  
3           attention.

4           CHAIR MOLINA: Thank you, Member Anderson.

5                     Mr. Pontanilla, any questions for Mr. Jencks,  
6           as well?

7           VICE-CHAIR PONTANILLA: Yeah.

8           CHAIR MOLINA: Okay. Proceed.

9           VICE-CHAIR PONTANILLA: In regards to Condition Number 2,  
10           that we discussed this in length, is it my  
11           understanding, Mr. Jencks, that you agreed to this?

12                     I know you said it was going to be  
13           hard-pressed but you're going try like hell to  
14           complete it.

15           MR. JENCKS: Are you speaking specifically about --

16           VICE-CHAIR PONTANILLA: Condition Number 2.

17           MR. JENCKS: 2a or all the -- all the conditions?

18           VICE-CHAIR PONTANILLA: All of the conditions -- in fact,  
19           the one that recommend -- that we had consensus on.  
20           And this involved Piilani Highway.

21           MR. JENCKS: I did have a comment with regard to the  
22           Piilani Highway, and that was that the way it's read  
23           right now -- or defined right now, 2a, it means that  
24           the highway has to be completed prior to any -- even  
25           a grading permit issued within the project area.

1           And we were -- you know, Ms. Anderson was talking  
2           about the idea of developing a condition that would  
3           allow us to get to work in the project area without  
4           further exacerbating any traffic situation on  
5           Piilani Highway, and we have an idea for that.  
6           Basically it's fine, except for the timing issue.  
7           We certainly can do it concurrently. We would like  
8           to be out on the project, as well, doing some  
9           grading work, initiating construction so that we can  
10          provide some housing sooner than later in the  
11          project area.

12       VICE-CHAIR PONTANILLA: Thank you.

13                       Thank you, Chair.

14       CHAIR MOLINA: Thank you, Mr. Pontanilla.

15                       Mr. Medeiros, followed by Ms. Anderson.

16       COUNCILMEMBER MEDEIROS: Yes, I just wanted to follow up  
17          on Member Anderson's comments about bonding, and I  
18          wanted to ask Mr. Jencks if he had any marks  
19          regarding Member Anderson's description of the  
20          bonding.

21       CHAIR MOLINA: Mr. Jencks?

22       MR. JENCKS: I think Ms. Anderson's description per the  
23          Code is accurate. I don't question that. I -- but  
24          I can tell you that as long as I've been around  
25          through a number of project districts -- for

1 example, the Wailuku Project District and the  
2 Piihana Project District, both very large project  
3 districts with thousands of units in them and a  
4 significant amount of offsite infrastructure  
5 requirements, they were not required to bond all  
6 those improvements up front as a part of the project  
7 district approval. They certainly have bonded  
8 significant amounts as they developed the projects  
9 and they've been pretty successful in getting that  
10 done.

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

12 MR. JENCKS: Okay.

13 COUNCILMEMBER MEDEIROS: Thank you.

14 CHAIR MOLINA: Thank you, Mr. Medeiros.

15 Member Anderson, followed by Member Hokama.

16 COUNCILMEMBER ANDERSON: You know, maybe if we had put a  
17 bond on the conditional zoning we would have the  
18 affordable housing for the Maui Lani project  
19 already. You know, they wouldn't have any choice.  
20 And, you know, we could have called in the bond and  
21 done it ourselves instead of, you know, trying to  
22 fit their needs.

23 One comment I just want to make quickly is,  
24 you know, if -- you know, I don't have the condition  
25 written out yet and we just -- I just got it from

1 Mr. Jencks. I had asked him the other day to write  
2 a condition that would allow them to do some work  
3 concurrently on the site while they're widening  
4 Piilani Highway, that -- you know, site preparation  
5 that doesn't require construction or materials  
6 traffic to be added to the highway, and  
7 Mr. Goodfellow said that they can, you know, start  
8 work on the project, bus in the workers so that  
9 there's not a lot of traffic coming in, and they've  
10 got to do a lot of -- what do you call --  
11 rock-crushing on the site -- God forbid they gotta  
12 do that, but I guess they do. But, you know, if  
13 they're doing the widening for Piilani, there's  
14 going to be a lot of blasting of that blue rock; and  
15 if we allow them to then take that blue rock and put  
16 it onsite, that's also going to cut down on a lot of  
17 construction traffic. Instead of hauling truckloads  
18 of blue rock somewhere else, they can haul it to  
19 their own site, then I think that's to everybody's  
20 advantage. So, that would be a condition that I  
21 would be willing to look at as long as, you know,  
22 the highway is widened first, concurrently.

23 CHAIR MOLINA: Thank you, Member Anderson.

24 Member Hokama, question for Mr. Jencks?

25 COUNCILMEMBER HOKAMA: Chairman, no. But I would ask for

1 your short indulgence on your part.

2 And thank you, Mr. Jencks.

3 You know, I would agree that if I still had  
4 the confidence and faith in the private sector to do  
5 what they said they were going to do, maybe we  
6 wouldn't be having such difficulties with conditions  
7 of approval, Mr. Chairman. But, you know, since it  
8 was brought up with the Piihana/Wailuku Project  
9 Districts, yeah, Council should have bonded it.

10 Because why did we have the audacity of Mayor  
11 Arakawa come forward with one Public Works project  
12 to do a condition of approval placed on the Piihana  
13 project district, which was the bridge and the road  
14 improvements, as well as a non-performance of  
15 condition of zoning to improve Waiale Drive with all  
16 the subsurface improvements?

17 Because I think people like us forget  
18 conditions of approval, okay. Luckily I still have  
19 my -- enough memory cells to recall, that here was a  
20 mayor willing to do a private sector commitment with  
21 County funds. But I can tell you, I agree with  
22 Mr. Jencks. It is the County's intention not to  
23 allow facilities that are not ready for occupancy to  
24 allow occupancy. In the last two years,  
25 Mr. Chairman -- you know these projects just like I.

1           We had the phone calls, we had the messages. Which  
2           projects violated that? Wailuku Country Estates,  
3           okay; Towne Development in Wailuku; Spencer's  
4           Waikapu; MCC, Agora currently in Kahului. No final  
5           inspection, no certificate of occupancy that this  
6           dormitory requires, and yet the college puts 40  
7           students in, and we already gave them notice of  
8           violation. So, while it is the intent of the County  
9           to have these people follow, I can tell you, in the  
10          last 12 to 24 months we get four entities that had  
11          no problem putting in people before final inspection  
12          or certificate of occupancy.

13                    So, what does that tell us about our laws,  
14                    our requirements? Meaningless?

15                    I have no problem punishing those that do not  
16                    adhere to our laws.

17                    Thank you, Chairman.

18          CHAIR MOLINA: Thank you, Mr. Chairman. Point well made.

19                    Mr. Victorino, if -- oh, okay.

20                    Members, Chair is aware of the time.

21                    I'm going to ask Staff -- we're going to --  
22                    we won't have time to address and make -- come to a  
23                    decision on this amendment.

24                    Members, do you want to review the -- you  
25                    want to hold off on it?

1                   Okay. What I'll do -- you know what I'll do,  
2                   I think -- you have copies, made, yeah?

3                   So, why don't we -- we'll just distribute it.  
4                   We won't talk about it today. I'll just let you  
5                   look at it on your own. And then what we need to do  
6                   is discuss a recess day for our next meeting.

7                   The Chair has recommended Monday,  
8                   November 5th, or Tuesday, November 6th.

9                   So, what is the pleasure of the majority?

10                  We'll start with Mr. Victorino.

11                  COUNCILMEMBER VICTORINO: Monday will be fine for me.

12                  Tuesday I won't be available.

13                  CHAIR MOLINA: Okay. The Chair is looking at a start time  
14                  of 9:00 a.m., to go as long as we can.

15                  Mr. Pontanilla, your availability for Monday  
16                  or Tuesday? Your preference?

17                  VICE-CHAIR PONTANILLA: Monday.

18                  CHAIR MOLINA: Monday?

19                  Mr. Chairman?

20                  COUNCILMEMBER HOKAMA: Chairman Molina, I'll be in and out  
21                  Monday, but I'll give you as much time as I can in  
22                  between my already scheduled appointments.

23                  Thank you.

24                  CHAIR MOLINA: Okay. Thank you, Mr. Hokama.

25                  Mr. Medeiros?

1 COUNCILMEMBER MEDEIROS: Chair, I'll be available on  
2 Monday from 9:00 to 2:00. I have a meeting with the  
3 Mayor in Hana already scheduled that we cannot  
4 change, so I can go to 2:00 o'clock.

5 CHAIR MOLINA: Okay. Thank you.

6 Member Johnson?

7 COUNCILMEMBER JOHNSON: I'm not available on Monday, and  
8 I'm available on Tuesday from 9:00 until noon and  
9 from 3:30 until 5:00.

10 CHAIR MOLINA: Okay. Thank you, Member Johnson.

11 Member Anderson?

12 COUNCILMEMBER ANDERSON: I'll make myself available with  
13 the majority, Chair. I think it's important that we  
14 have as many people here as possible.

15 CHAIR MOLINA: Okay. Thank you.

16 Mr. Mateo?

17 COUNCILMEMBER MATEO: Chairman, I, too, will make myself  
18 available Monday with the majority.

19 CHAIR MOLINA: Okay. Looks like Monday it is.

20 Mr. Medeiros?

21 COUNCILMEMBER MEDEIROS: I just want to make a correction  
22 in my statement so the Mayor doesn't send somebody  
23 down to see me. It's with -- it's with her  
24 Administration representatives from the Parks  
25 Department.

1 CHAIR MOLINA: Oh, okay.

2 COUNCILMEMBER MEDEIROS: We have our project in Hana to go  
3 over.

4 CHAIR MOLINA: All right.

5 COUNCILMEMBER MEDEIROS: Thank you.

6 CHAIR MOLINA: Okay. Members, one last thing Chair would  
7 like to share with you.

8 Staff, could you hand out the -- this is  
9 basically an update of what we have done not  
10 including today. This is for your own perusal. And  
11 if you have any other considerations I'd like to  
12 give you some time to look it over, if you have  
13 additional questions on what we have done thus far.  
14 So, I'd like to give you guys an opportunity to do a  
15 little homework if you choose to do so.

16 And, so, Members, as much as possible, if you  
17 do have some proposed conditions, if you can get  
18 them in writing that will help Staff a lot so we  
19 don't spend a lot of time trying to consolidate all  
20 of these proposals -- verbal proposals on the floor  
21 and then try to put it in writing for everybody's  
22 own understanding. So, these are basically all the  
23 conditions, how we've addressed them, what's been  
24 the result. This does not include what has  
25 transpired today.

1           And, so, for the record, we moved on  
2           Condition 11, and I believe we also moved on a  
3           condition that was Member Anderson's proposal, and  
4           we eliminated Conditions 16 and 17. And I  
5           believe -- is there anything else? I think that's  
6           what we got down. So, 11, which was related to the  
7           golf course. I think that's it. Okay. So, we made  
8           some progress today in four hours.

9           Okay. Members, so, with that being said,  
10          thank you all for giving your time for today. I  
11          know it's been a very, very busy week. Tomorrow we  
12          have a Council meeting at 9:00 a.m., and I believe a  
13          recessed Water Committee meeting, Member Anderson.

14                    Is that at 1:30?

15          COUNCILMEMBER ANDERSON: Yes. Thank you, Chair.

16          CHAIR MOLINA: Okay. Members, so get a good night's rest,  
17          and thank you all for your time.

18                    This meeting is in recess until Monday,  
19          November 5th, 9:00 a.m., right here in the Council  
20          Chambers.

21                    Meeting in recess. (*Gavel.*)

22          **RECESS:           5:33 p.m.**

23

24

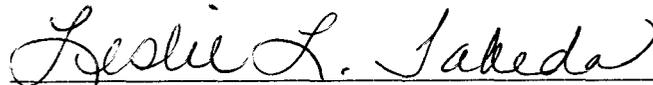
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STATE OF HAWAII )  
 )  
CITY AND COUNTY OF HONOLULU )

I, LESLIE L. TAKEDA, RPR, CSR #423, do hereby  
certify that the foregoing pages comprise a full,  
true, and correct transcription of the audiotaped  
proceeding taken in the above-entitled cause, to the  
best of my ability.

Dated this 29th day of November 2007.



\_\_\_\_\_  
LESLIE L. TAKEDA, Notary Public, State of Hawaii  
My commission expires February 11, 2011