

# LAND USE COMMITTEE

Council of the County of Maui

## MINUTES

November 5, 2007

Council Chamber

**RECONVENE:** 9:07 a.m.

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Joseph Pontanilla, Vice-Chair (Arrive 9:10 a.m.)  
Councilmember Michelle Anderson, Member (Arrive 9:11 a.m.)  
Councilmember Gladys C. Baisa, Member (Leave 2:58 p.m.)  
Councilmember G. Riki Hokama, Member (Arrive 1:55 p.m.; Leave 2:33 p.m.)  
Councilmember Jo Anne Johnson, Member (Arrive 1:35 p.m.)  
Councilmember Danny A. Mateo, Member  
Councilmember Bill Kauakea Medeiros, Member (Leave 2:05 p.m.)  
Councilmember Michael P. Victorino, Member

**STAFF:** Tammy M. Frias, Committee Secretary  
Carla M. Nakata, Legislative Attorney  
Lei Kihm, Executive Assistant to Councilmember Bill Kauakea Medeiros

**ADMIN.:** Colleen Suyama, Deputy Director, Department of Planning  
Michael Miyamoto, Deputy Director, Department of Public Works  
Michael J. Hopper, Deputy Corporation Counsel, Department of the Corporation Counsel

**OTHERS:** Charles Jencks, Owner's Representative, Honua`ula Partners, LLC  
Steven J. Goodfellow, Goodfellow Bros., Inc.  
Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc. (Applicant's entitlement consultant)  
B. Martin Luna, Esq., Carlsmith Ball, LLP (Applicant's attorney)  
Joyclynn Costa  
Kimokeo Kapahulehua  
Additional attendees (10)

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

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

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CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18th, 2007, is now in session. It is Monday, November 5th, seven minutes after 9:00 a.m. Good morning, Members.

COUNCIL MEMBERS: Good morning.

CHAIR MOLINA: Good morning. For the record we have in attendance Members Mateo, Baisa, Medeiros, Victorino, and Molina. Excused, Members Anderson, Johnson, Hokama and Pontanilla. From Staff we have Committee Analyst, Carla Nakata; Committee Secretary, Tammy Frias; and from Corporation Counsel's office we have Michael Hopper; and from the Planning Department we have Deputy Director Colleen Suyama.

Members, we're getting there. I would like to start our event, event, proceedings, it's become an event, we're getting there. We last left off on a proposed amendment for Condition No. 4. And these amendments to this condition was being proposed by Members Anderson, Hokama, and Johnson. And we put them in writing, so you should have a copy of it. It should have been given to you. Just for the record I'll read to you all what it states.

Condition 4. Honua`ula Partners, LLC, its successors and permitted assigns, shall be responsible for all required infrastructural improvements for the project, including water source and system improvements for potable and nonpotable use and fire protection, drainage improvements, traffic-related improvements, wastewater system improvements and utility upgrades, as determined by the appropriate governmental agencies and public utility companies. Except as otherwise provided by more specific conditions of zoning, said improvements shall be constructed and implemented concurrently with the development of each phase of Kihei-Makena Project District 9 and shall not be bonded. A written clarification [*sic*] by the director of public works that the improvements are complete, in accordance with the standards established by the County, shall be required prior to issuance of a certificate of occupancy or final subdivision approval. Honua`ula Partners, LLC shall execute appropriate agreements with governmental agencies regarding participation in improvements of infrastructure and public facilities as determined by the agencies.

So there you have the proposed amendments to Condition 4. Any comments, Members, before the Chair offers a recommendation? Member Baisa.

COUNCILMEMBER BAISA: Good morning, Chair.

CHAIR MOLINA: Good morning.

COUNCILMEMBER BAISA: Because I was not here when this was discussed, I would really appreciate somebody explaining to me the phrase "shall not be bonded". What is that about?

CHAIR MOLINA: Okay. Maybe I can ask Corporation Counsel or the Deputy Planning Director to give us a clarification. Mr. Hopper?

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MR. HOPPER: As I understand it, and I, I mean honestly the Committee would be better equipped to explain the intent of the condition, but as I read it, it was that the Public Works Department in the Code allows for a, allows for the required improvements that need to be made to be bonded. Basically, the developer posts a bond, is able to get the approvals that they need in order to sell the lots. They bond the value of the improvements so that if they do not complete the improvements the County would be able to use the, the bond to perform the necessary improvements.

In, in this case I believe it was Councilmember Hokama voiced some concerns with bonding and some of the problems it caused. And I, I believe that's what precipitated the condition and others can correct me if I'm wrong.

CHAIR MOLINA: Thank you, Mr. Hopper. Staff, do you have any comments? Okay. Okay, Member Baisa, I hope that answers your question.

COUNCILMEMBER BAISA: No, not really. It would appear that the bonding would be a backup in the event that the developer would not perform. Can somebody tell me why we wouldn't want that backup? That, that's what I don't understand.

MS. SUYAMA: Maybe I can clarify. What it is, is that in the past rather than constructing the improvements before you issue the occupancy permit or the final subdivision approval, developers were allowed to bond the improvements which means that the improvements come later. And I think in the discussion what the Council wanted to make sure is that the improvements are actually constructed before you issue a certificate of occupancy or you issue the final subdivision and approval. So they took that option of bonding outside saying that, no, you shall build, actually build the improvements before you get any of these subsequent approvals.

COUNCILMEMBER BAISA: That's much clearer. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Staff, for the record who made that request, the proposed amendment to Condition 4; which Member?

MS. NAKATA: I believe it was, as Deputy Corporation Counsel indicated, Member Hokama.

CHAIR MOLINA: Member Hokama, and he's not here this morning. That's unfortunate. Joining us for the proceedings this morning is now Member Pontanilla and Member Anderson. Good morning, Members.

COUNCILMEMBER ANDERSON: Good morning.

VICE-CHAIR PONTANILLA: Good morning.

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CHAIR MOLINA: Okay. We are on Condition 4.

COUNCILMEMBER MEDEIROS: Chair?

CHAIR MOLINA: Okay. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and good morning. You know, I, I brought up that same question that Member Baisa is asking about, and I think it was helpful for me, and it would be helpful for her to also hear the perspective from the developer's side about the bonding, and that helped during the meeting that we discussed it. So that's, that would be just my recommendation.

CHAIR MOLINA: Okay. So you would like to hear from the, the Applicant on it?

COUNCILMEMBER BAISA: I would, Chair.

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: I think it will help Member Baisa.

CHAIR MOLINA: Okay. Thank you. Any objections, Members? I shall bring up Mr. Jencks to...

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. And the Chair had planned on bringing Mr. Jencks up anyway to give his comments on these at least three amendments to Condition 4. Mr. Jencks, good morning.

MR. JENCKS: Good morning, Mr. Chair and Members of the Committee. I reviewed the proposed wording over the weekend, and thought a lot about it, and talked to, you know, Steve and I had a number of, of conversations about this issue and talking about how, how one builds housing and how one builds a subdivision in Maui County. And I did, last week talked about, about this issue as well in, in, in this Committee.

The idea, well, first of all, I think you, you all need to understand any subdivision today that's built in Maui County is bonded and that's how, I mean that's, the example I used with Jesse Spencer's subdivision in Waikapu. He went ahead, he subdivided the land, he did his construction drawings, he bonded for all the improvements, and then went ahead and started doing the improvements.

Under current County law one of the issues that came up was the issue of selling property. You can take a non-binding reservation on property which means that it's, you get money from the perspective buyer for a lot in a bonded subdivision. You can't, he can't own that property until you get a final subdivision, and he can back out at any time. If he gives you, if he gives you \$10,000 for his, his contract for the bonded subdivision, you hold that money. He can back out

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at any time. It's, it's very flexible for the buyer. You have, you have no leverage at all as, as a builder. The only time you can actually make that contract go hard is when you have a final subdivision approval which gives you the permission to close on the property. Even if you close on the property with a bonded final, you can't occupy the house, no bank's going to loan you the money until the house is completed, and inspected, and finalized.

This kind of requirement puts a very, very heavy onus on the project with regard to a lot of money upfront, a lot of construction activity, all the utilities, all the roadways have to be done and completed before I can sell a house, I can occupy a house. Certainly you shouldn't be occupying houses before you have a certificate of occupancy or the Director of Public Works says these improvements are, are able to be used by the public. And believe me, my experience in Maui County is that doesn't come very easily.

I would say to you this kind of requirement only makes the ability to build affordable housing astronomically more difficult, astronomically more difficult. I can understand the concern with regard to baseline systems. Already we're talking about doing Piilani Highway before there's any work on the project. That's a, that's a difficult enough threshold to get over when you're trying to build housing, have a lot of things running concurrently. The way the Code is written and the protections that are provided in the Code it really gives you the ability to get things going, save time, save money, and deliver houses to people on a timely manner. Without this ability of bonding it really hamstringing our ability, and almost anyone's ability, and I would, I would hope, I would hope that this is not a punitive measure for this project. If this is something you're thinking about countywide, I think you really have to rethink the logic on this approach.

CHAIR MOLINA: Thank you, Mr. Jencks. Mr. Medeiros, any other questions for the Applicant?

COUNCILMEMBER MEDEIROS: No, I, I think that's helpful to hear that perspective. And also, I think one of the components of this project that many of us have been, you know, pondering over is the affordable housing component. And I think if we make it difficult for the developer to construct the affordable housing component, then we're, we're, we're falling further behind on our affordable housing units. And the other thing is, and I think Mr. Jencks expressed his, you know, his knowledge on it and experience, is that, I don't know, because we're the, we're, we only see Mr. Jencks that comes here so we think he's the guy that does everything, and I, I think for the affordable housing component he would probably sell that property to a developer to do the affordable housing side, and he wouldn't be doing it himself.

So I, I think we need to make it where it's attractive for a developer to come in and say, yeah, we want to buy this land and, and do the affordable housing side. Now that's my understanding of hearing it before. And if Mr. Jencks wants to confirm that or say, no, that's not quite true, then I'd, I'd like to hear his comments on it.

CHAIR MOLINA: Okay. Mr. Jencks?

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MR. JENCKS: That, that would certainly be, be the process. What we would do is do a Phase II application, and in that Phase II application provide a subdivision of the properties that we're talking about today, Honua`ula. And in that subdivision we would identify affordable housing builder lots. It could be a five-acre piece, it could be a ten-acre piece, and then we would try to sell that piece to someone to have them come in and build a product that we would, we would be determining would it be single-family, would it be multi-family, or a mix. We would give them some direction and maybe go out to bid. There's lots of folks that do that very well and do it very effectively. But this requirement that you're proposing here would make it very, very difficult for that person to buy the land and have to wait. It puts everything influx. It puts everything influx.

COUNCILMEMBER MEDEIROS: So, Mr. Jencks, in that description somebody like, who's very experienced in doing affordable house, like Mr. Spencer, would have an opportunity to approach your project and say that they would like to do the affordable housing component of it?

MR. JENCKS: That's correct.

COUNCILMEMBER MEDEIROS: Okay. And, Mr. Chairman, I know when we discussed this in a previous meeting, I was not for the part of this condition that takes out the bonding, and I'm still not. I, I, I think it's, you know, something that the County needs to keep as an option, and as explained by Mr. Jencks it helps also in them moving forward on the affordable unit component of this project. So those are, you know, my comments on it. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. So, Mr. Jencks, I guess in a nutshell to condense your, your comments responding to Mr. Medeiros's questions, and basically it would create a delay. Potentially you, you would not be able to fill, to fulfill the affordable housing components. It would make it extremely difficult.

The reason I bring this up because just last week we, we discussed the, the issue of providing incentives for developers to build affordable housing in Mr. Mateo's committee. So something like this could provide a major disincentive to, to get the affordable housing component completed as it relates to this project.

MR. JENCKS: For a builder like Jesse Spencer, he wouldn't be able to perform under this bill. He wouldn't be able to do it.

CHAIR MOLINA: Thank you.

MR. JENCKS: Now, Mr. Chair, I do have, over the weekend working with Mr. Luna and Steve we did develop a, we took the bill that was proposed and, and added some wording and deleted some wording. I'd like to offer that as, for your consideration.

CHAIR MOLINA: Okay. Members, we'll have this passed out to you.

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COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Okay. Mr. Medeiros, are you done with questions for Mr. Jencks before I recognize Mr. Victorino?

COUNCILMEMBER MEDEIROS: Yes. Mahalo, Mr. Chairman.

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

COUNCILMEMBER VICTORINO: I tend to agree with my colleagues as far as this bonding issue is concerned. However, I, I think there is a real challenge, because we have experienced in the past where occupancy in said project of Mr. Spencer was taken up before final approval was given. And I think that's what caused this more than anything else is the fact that there have been incidents where people have been able to occupy homes and the final approvals were not given, the certificate of occupancy was not forthcoming, and you understand what I'm saying, Mr. --

MR. JENCKS: Yes.

COUNCILMEMBER VICTORINO: Okay. So, again understand why the rationale. It's not punitive in, in that respect, but we want to make sure that things are done for the public. Too many promises have been made in the past and not fulfilled, and I think that's what this Council is saying that, you know, if we want to make sure concurrency occurs, that we do it the right way. We don't want to hinder no one, that's, that's a fact, but we also want to make sure that there is no skating the system, and then ending up with nothing for the people.

So, again, this intent and whether, and I kind of agree if it's going to hinder, then I'd like to see change and maybe a little bit more, but the intent was to make sure concurrency and that all that construction, and occupancy, and all these other issues would be done the right way and there will be no sliding the system so that, hey, the developer gets an advantage and the people lose again. So I hope you understand what the intent was with this, Mr. Jencks.

MR. JENCKS: I, I, I understand, I understand clearly the intent.

COUNCILMEMBER VICTORINO: Okay. So just so long as you understand that, you know, so let's, let's see what your verbiage is, and I, I'll wait to say anything more until I look over your verbiage.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Member Anderson, questions for Mr. Jencks?

COUNCILMEMBER ANDERSON: Not necessarily. I'm, I'm sorry I came in a little late, Mr. Chair, so I didn't get the, the thrust, but we're, we're working on Condition 4 that was printed out for us?

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CHAIR MOLINA: Yeah, we'll, at a later point we'll get to the Applicant's proposal, but for now we're, we're discussing the proposed amendment from Member Hokama in which the project shall not be bonded. That is up for consideration at this point, Members --

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: -- so I'd like to keep our discussion on that portion of the amendment.

COUNCILMEMBER ANDERSON: Right. And having dealt with a lot of bonded subdivisions and the consequences thereto, I'm leaning in support of this, at least the intention. And the reason being is that once a subdivision gets bonded that means that they have received final construction plan approval and reviewing agencies responsible for looking at the construction plans may or may not have already submitted their comments to Public Works. And so when they get the bond, sometimes the bond isn't all inclusive of all the improvements that are eventually going to be needed. And so there could be delay in getting all the improvements put in, in working out conflicting opinions between the developer and the reviewing agency. So just because you have it bonded doesn't mean anything's going to happen any sooner than later.

And the concern I have with this, Mr. Chairman, is that once it's bonded you get your final subdivision approval on paper sufficient enough to record it with the Bureau of Conveyances, and then you sell the property. Now there may be, you know, extenuating conditions or circumstances that the developer may allow the property owner, you know, should the improvements not be done at a certain amount of time we will relieve you of one percent of your purchase price or, you know, some kind of give and take. But it doesn't really, in my mind, allow the subdivision to get done any faster or quicker. Basically if you tell the subdivider you get these improvements in the ground within a year or you don't get your final in order to sell off the lots. And they always give them extension if there's extenuating circumstances. They always have extensions. Say, you know, a construction crew got tied up and couldn't make it that week, and so it's extended for another week. There's always those kinds of things that happen. But they are then under the gun financially and time wise to get those improvements put in because they want to sell the lots.

But if we allow them to bond the subdivision, then they can sell off the lots and that's their primary goal is to sell off the lots. And, you know, I'd like to think that all developers in the County have the financial wherewithal and the moral integrity to follow through on a timely manner so that these lot owners can begin building as promised on their lots. But that does not always happen. We have a situation right now that I brought up quite a bit during our discussion on the water meters or the Water Availability Bill, where somebody has been waiting, was promised within five months the lots would be buildable, and it's now two and a half years later and the lots are still not ready for building.

And so I, I would like to have a better explanation from Mr. Jencks on how he thinks that this is going to slow things down, because I see it as an incentive to speed things up and get it done so you can get your final approval the normal way.

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CHAIR MOLINA: Mr. Jencks, any response?

MR. JENCKS: The only way, when you file a subdivision map the only way you can get a final subdivision approval is one of two ways. One, is submitting your plat, getting a preliminary approval with all the comments, submitting your construction plans, and then once you get substantial review completed, submitting a bond estimate for the completion of those improvements once all the comments have been, have been returned, you've made the changes to the plans, and you submit an estimate for the bonded final, or you receive construction plan approval and then actually construct all the improvements, whatever it happens to be. Then you can get your final subdivision approval once all the agencies accept the improvements whether it's Public Works, Water Supply, Maui Electric or who, who, whom, whomever.

I, I think the real point here is that given a project of this size and the, the amount of mainline infrastructure that has to go in place, and the heavy capital cost before we can even get into a parcel of land and start offsite improvements for roadways and utility systems is very significant. It will, not allowing us to bond will not allow us to sell land to a merchant builder to get affordable housing built, or build even gap group housing because frankly trying to sell someone a piece of property without the improvements in is very difficult. They're not going to buy, they're not going to be able to finance it, and they're not going to be able to convince a banker to loan the money on a piece of property without any roads in unless there's some kind of a guarantee, and that guarantee is a bond.

And generally speaking the bonds, there's no incentive, there is zero incentive for, for an owner/builder to provide a bond that is less than the full replacement value. There is zero incentive to do that, and I might tell you, Members, that when you submit a bond request for the County of Maui it's reviewed very carefully, and I cannot remember one instance when a bond was submitted and the owner/builder wasn't trying as quickly as he could to retire the value of that bond, because it's a very expensive proposition to offer up a bond with no gain on it. It just sits. Okay. It's money, it's money that's held by the County until he finishes, and he has no incentive, he has zero incentive to delay the completion of the work.

So when you got multiple projects underway, you have mainline spine infrastructure, roadways, utility systems that are subdivided, and you have builder lots that are also subdivided, your goal is to get things done as quickly as possible and get homes built. And that's the whole point of this exercise is to get affordable homes built and not having the ability to bond, once again, will eliminate the possibility of someone like a Jesse Spencer or even D.R. Horton for that matter to come in, spend the capital, get stuff done, get homes built without the ability to close on the property.

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

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COUNCILMEMBER ANDERSON: No. I'm, I'm just feeling that we probably should have Chair Hokama here to defend his condition.

CHAIR MOLINA: Well, it's unfortunate he is not here and the Chair of this Committee wants to move on. And if any Member makes an amendment proposal, they should be here and if they're not, they're not, and we will move on. If there are no other questions for Mr. Jencks, I will excuse him, and the Chair is going to conduct a vote on either we shall incorporate this condition or this language into Condition 4 or not. Again, Members, the words I guess that are in question here after District 9 the words read "and shall not be bonded". Now it is up to this Committee if you want to leave that specific language in there or remove it. Okay. Members?

COUNCILMEMBER MATEO: Chairman?

CHAIR MOLINA: Yeah, Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. Just for additional clarification, Mr. Jencks indicated that once the developer submits the, the bond figure, that is submitted to whom and it is reviewed by whom?

CHAIR MOLINA: Planning, can you respond to that or Corporation Counsel?

MS. SUYAMA: When they bond improvements for subdivision, the bond is executed with the Department of Public Works who grants the final subdivision approval. There is one thing if I may, you know, further talk about the bond? It's more critical that the improvements are in place when the structures are built such as, you know, the, the single-family. And as a compromise the Department, you know, would suggest that if you take out the words "shall not be bonded" from the current revised condition, that you also, you require it though in terms of getting a certification for a certificate of occupancy, and after certificate of occupancy I would put a comma, including for single-family units.

In other words, single-family units, as we explained last week, do not require certificate of occupancies once they're built. So then this way it, it says that in order for you to occupy the single-family units you need to get a CO and because there are concerns that bonding, you know, may allow them to get a certificate of occupancy, we would, you know, provide language that a bond for the improvement shall not satisfy the requirements for certification and only require the certification for the CO or the certificate of occupancy. That would be, you know, another avenue that the Council can take.

CHAIR MOLINA: Mr. Mateo.

COUNCILMEMBER MATEO: Thank you, Ms. Suyama. Then are you aware of the Department adding more to the submitted bond amount because of the Department's feeling that either it will take longer to do, the improvements will be held off longer, or it had not been estimated to be I

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guess current? Are you aware of the Department adding more to what has already been submitted by the developer?

MS. SUYAMA: I'm not aware that the Public Works Department will request more monies than what is the estimated value of the construction. It's usually based upon, the way I understand it is that the developer comes in with an estimate of all the improvements that need to be bonded, what is your estimated value. And the Public Works Department reviews that estimate and either agrees that the estimate is a reasonable estimate or they may come up with their own estimates as to what they feel is the, you know, is the construction costs of putting those improvements in. And basically between the developer and the Public Works Department they come to an agreement as to what is the estimated value. And an agreement, you know, the bond is then issued and the Public Works Department keeps the bond until satisfaction of the construction of the improvements. Once they, they determine that it has been constructed to their satisfaction, then they release the bond back to the developer.

COUNCILMEMBER MATEO: Okay. Thank you, Ms. Suyama. Thank you, Chair.

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

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I just wanted to follow-up on Member Mateo's question, and so for the Planning Department. So when the submittal by the developer for the bonding and they give the estimate, and then the Public Works reviews it, is the submittal from the developer list all the improvements?

MS. SUYAMA: It's, it's supposed to itemize the improvements that are going to be constructed through the bond.

COUNCILMEMBER MEDEIROS: And does the Department of Public Works have then an opportunity to add something on if they feel that improvement was not on the original list?

MS. SUYAMA: I believe they, they are supposed to ensure that all improvements that are required as part of the subdivision is included in the bond unless the developer has made a commitment that those improvements will be constructed or has been constructed.

COUNCILMEMBER MEDEIROS: Okay. So the Department of Public Works has that authority during their review process and the acceptance of the bond to be sure that all the improvements listed are indeed the entire list?

MS. SUYAMA: That's my understanding that they're supposed to ensure that it is the entire list of improvements.

COUNCILMEMBER MEDEIROS: Thank you, Ms. Suyama. Mahalo, Mr. Chairman.

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CHAIR MOLINA: Thank you, Mr. Medeiros. Any other questions? Currently right now we don't have a motion on the floor for the, the whole condition itself. At this point it's I guess exploratory where we've taken I guess informal amendments at this point to restructure the language. So I just want to make the Members aware there is no motion on the floor. Now we can either move this via formal motion or we can move this via consensus. So at this point what we're looking at is taking into consideration the language of leaving in "and shall not be bonded", or we can take it out as a Committee. So, Members --

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: -- since we don't have a formal motion on the floor, Mr. Pontanilla followed by Member Anderson.

VICE-CHAIR PONTANILLA: Yeah, one question for Ms. Suyama in regards to bonding of projects.

CHAIR MOLINA: Okay.

VICE-CHAIR PONTANILLA: Have we had any big projects that weren't bonded?

MS. SUYAMA: I couldn't answer that. You would need to talk to the Public Works Department.

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

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

COUNCILMEMBER ANDERSON: Yeah, thank you, Chair. You know, the way this, this currently reads is that as they go forward with, with each phase, you know, if we didn't have, I mean how it's currently reading allowing them to bond it, they would be doing a bond for each phase of the project and that bond would be through the Public Works Department because they're the authority for the subdivision and also probably...*(change tape, Side 1A)*...water improvements would be done with the Director of Water Supply.

But I brought up an option, and I'm wondering if Mr. Hopper could draw his attention to this. It's in 19.510.050. And basically what it says is that the Council can require a bond to cover all the conditions that we set on this property and, you know, that the conditions shall be fulfilled within the time limitations set by the Council or if no time limitation is set, within a maximum of five years from the date the ordinance is in effect. I don't know that that's ever been implemented, but I'm thinking with a project this big and with so much that we're asking to mitigate maybe it would be wise for us to look at a bond for the whole project, and then that way the Council then has some kuleana over whether or not these conditions are fulfilled. It says, failure to fulfill any conditions on a zone change within the specified time limitations may be grounds for the enactment of ordinances to restore the zoning to the previous zoning district or initiate a claim on the bond.

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Well, you know, I mean a prime example is the 400 acres they've had zoned since 1992 and haven't gone forward with any of the conditions, and the idea being is that if you come with a plan in front of a decision making body, and you take up all of our time, all of our staff time in order to get entitlement to build, and they went through Phase II, Phase through, right through Urban Design Review Board approval, and then you don't build. Then conditions change and that's why there's a five-year time limit. And we could have initiated, if there was a claim, a bond on this previous zoning we could have initiated a claim on the bond. So I'm just throwing that out there for Members to think about, Mr. Chairman. I, I don't see it as being, you know, a substitute for this to possibly in addition to.

COUNCILMEMBER BAISA: Chair?

CHAIR MOLINA: Okay. Thank you, Member Anderson. Member Baisa?

COUNCILMEMBER BAISA: Yes, Chair, thank you. You know, I started by asking this question and as I have listened to the conversation here about why we should or why we shouldn't it bothers me even more. I would like to leave it in. I think it's a viable option. I think it's one that is used often and, you know, it bothers me when we talk about how things are not done or not, they haven't been done or whatever. I just think we need to do better. You know, if there were conditions on approvals then I think the onus is on us to make sure that they happen.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Okay. Members, the Chair is ready to act on this. Again, we're looking at Condition No. 4 from the Maui Planning Commission. What was submitted to us this morning was the proposed amendments to that condition, so just for the record. So, again, the condition that's being, you know, amended with this language is Maui Planning Condition No. 4 which is on page four of your matrix in the fourth column. So we're acting on, this amendment was from Member Hokama. So the Chair will call for the vote whether to leave the language in and shall not be bonded, or leave it in *[sic]*. So in essence if you support leaving the language in you would vote aye. If you're against, if you want to have the language removed you vote no. Staff, is that correct?

MS. NAKATA: Yes, Mr. Chair.

CHAIR MOLINA: Okay. But we, again, we have no formal motion on the floor, so we can just take an informal, I guess, consensus. Can we go in that route? Because the amendment, amendments were proposed on a condition that had not been, you know, no formal motion was presented.

MS. NAKATA: That's correct. There's no motion currently to replace the Maui Planning Commission Condition No. 4 with the language that was distributed on November 1st.

CHAIR MOLINA: Would it be cleaner then if the Chair proposes a motion to, to pass Maui Planning Condition 4, and then address the said amendments, or would that just add to the confusion?

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MS. NAKATA: Well, the Chair could entertain a motion to replace the Maui Planning Commission Condition No. 4 with the language distributed to the Committee on November 1st --

CHAIR MOLINA: Okay.

MS. NAKATA: --and then make subsequent amendments to that.

CHAIR MOLINA: Okay. Members, you've heard the Staff making the suggestion. We got this condition that was reworded, that was rewording the Maui Planning condition, Condition 4. So the Chair could entertain a motion to replace the Maui Planning condition that's stated in your matrix with this amended language that's been distributed to us, and then we can work on the said amendments. Is that clear?

COUNCILMEMBER ANDERSON: No.

CHAIR MOLINA: No? Okay.

COUNCILMEMBER MEDEIROS: Chair.

COUNCILMEMBER ANDERSON: Are we, are we voting on the first Maui Planning Commission Item 4, the second Maui...

CHAIR MOLINA: Yeah. Well, what, what we're doing, the Chair is considering for you, for your vote or would like to ask you to consider is if you look on your matrix, the fourth column is Maui Planning Condition No. 4. Then what transpired at our last meeting was all these amendments to...

COUNCILMEMBER ANDERSON: Column four?

CHAIR MOLINA: Yeah. Not, not, not the one in column two, the one in column four.

COUNCILMEMBER ANDERSON: Right.

CHAIR MOLINA: So then what was submitted to us on, at our last meeting was we had three separate amendment requests from, I believe Member Anderson you made one, Member Hokama, and Member Johnson. So Staff put together all of the language that was being considered into this proposal here that was handed to us this morning. Actually it was handed to us Friday. But now this is what we're discussing. So Staff is recommending, to make it a lot cleaner, to do a motion to replace the condition that's on your matrix with the language that we have here on this paper, and then we can go ahead and act on the amendments, proposed amendments from Member Hokama, yourself, and Member Johnson.

COUNCILMEMBER ANDERSON: Well, I thought my amendments were already incorporated. Are we talking about the one that says shall not be bonded or the other one?

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CHAIR MOLINA: Oh, no, the one from the Applicant? No, we're not acting on the Applicant's. Yeah. Yeah, that one we're not, we're not acting on that just yet.

COUNCILMEMBER ANDERSON: So we're acting on the one --

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: --that says shall not be bonded?

CHAIR MOLINA: Shall not be bonded, yeah.

COUNCILMEMBER ANDERSON: Okay.

CHAIR MOLINA: Is everybody clear?

COUNCILMEMBER MEDEIROS: Yeah, Mr. Chair.

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, I, I think Staff mentioned that this is the one that we received on November 1st, that's the one we're acting on.

CHAIR MOLINA: That's right.

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: At, at our last meeting which was on November 1st.

COUNCILMEMBER MEDEIROS: So that people have a sense of which ones were given out when. And the developer's recommendation is from today, November...

CHAIR MOLINA: Yeah, we're, we're not acting on that this morning.

COUNCILMEMBER MEDEIROS: Right. So we're acting on the one --

CHAIR MOLINA: No, no, that's out of the picture right now.

COUNCILMEMBER MEDEIROS: --from November 1<sup>st</sup>.

CHAIR MOLINA: Yes.

COUNCILMEMBER MEDEIROS: Okay.

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CHAIR MOLINA: Okay? I think it would have helped, Staff, if we had dated this thing November 1st so the Members have a clearer understanding of what we're acting on so.

COUNCILMEMBER MEDEIROS: I dated mine.

CHAIR MOLINA: Okay. Members, so the motion on the floor is again to replace Maui Planning Commission Condition 4 in your matrix with the reworded condition that was given out on November 1st. Okay. All those in favor?

MS. FRIAS: No, there's no motion.

CHAIR MOLINA: Yeah, well, the Chair is asking for a motion.

MS. FRIAS: Oh, but you said "all those in favor".

CHAIR MOLINA: Let me call for recess. Meeting in recess. . . .(*gavel*). . .

**RECESS: 10:45 a.m.**

**RECONVENE: 10:46 a.m.**

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee Meeting of October 18th, 2007, is now back in session. Okay. Members, thank you for that short break for the Chair to confer with Staff. Okay. To provide more clarity for you what we're doing again, the Chair will entertain a motion to substitute Condition No. 4 that's listed on your matrix with the reworded Condition 4 that was given out on November 1st. So the Chair will entertain a motion for that.

COUNCILMEMBER VICTORINO: So moved.

CHAIR MOLINA: Okay. It's been moved by Mr. Victorino. Is there a second?

COUNCILMEMBER ANDERSON: Second.

CHAIR MOLINA: Okay. Seconded by Member Anderson. Any discussion? Okay. Now, Staff, we'll go ahead and take the vote on that, and then right after that then we can address the, then we can address the amendments that was proposed.

MS. NAKATA: Yes, Mr. Chair.

CHAIR MOLINA: My question is, though, because the Member who made the amendment, Mr. Hokama, is not here then I could also, I could ask another Member to, just to put the amendment into play just so, just so, so we're not violating any Robert's Rules in terms of procedures? Can we do that?

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MS. NAKATA: Yes, you could entertain a motion to delete that phrase and shall not be bonded if that's your --

CHAIR MOLINA: Okay.

MS. NAKATA: --that's your preference.

CHAIR MOLINA: All right. Okay. Members, so what we'll do we'll take the vote to incorporate, if, if that's the will of the body, the reworded Condition 4 that was given out on November 1st. Member Medeiros?

COUNCILMEMBER MEDEIROS: Thank you, Mr. Chairman. I, I just want to be clear. So we're going to vote on this one that was submitted on November 1st.

CHAIR MOLINA: Yes, to replace the Condition 4 that's on page four of your matrix.

COUNCILMEMBER MEDEIROS: That's in the matrix, right.

CHAIR MOLINA: That's correct, yeah.

COUNCILMEMBER MEDEIROS: And say the scenario is that this amendment does not pass do we then have an option to vote on the other amend..., I mean the other...

CHAIR MOLINA: Well, if, if, if this does not pass right here, then the Committee will move on Condition 4 that, that's on your matrix. That will move on.

COUNCILMEMBER MEDEIROS: Okay. What about the consideration of what was submitted by the developer?

CHAIR MOLINA: Okay. At this point the Chair is not addressing any amend..., amendments from the developer at this point.

COUNCILMEMBER MEDEIROS: Okay. Just the...

CHAIR MOLINA: We will at a later point get a discussion on that, but at this point we're just looking at what we had come up with on November 1<sup>st</sup>. Of course, you know, the Committee at any time can come up, if they want to incorporate some of the developer's considerations they can do that at a later point, but for now the Chair would like to ask for your consideration to incorporate this condition that we reworded on . . . what was it . . . November 1<sup>st</sup>? Was that Thursday? Okay. Everybody ready for the vote? Okay. All those in favor signify by saying aye? Okay.

COUNCILMEMBER ANDERSON: Mr. Chair.

CHAIR MOLINA: Yes.

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COUNCILMEMBER ANDERSON: I think what your intention was, was to get this motion on the floor, and then amend it before we voted on the main motion.

CHAIR MOLINA: Okay. I was just told by Staff that we could go ahead take the vote on the motion, and then at a later point someone else on the floor can amend the motion that, that's been passed to incorporate, to substitute this condition. Okay.

COUNCILMEMBER MEDEIROS: Mr. Chairman?

CHAIR MOLINA: How would the body like to proceed then?

COUNCILMEMBER MEDEIROS: Right, no. Yeah, if we vote on just the motion and it fails, then how do you amend a failed motion?

CHAIR MOLINA: Then I guess somebody can propo..., make an amend..., amendment proposal from the floor to amend Condition 4. I guess there's two options. We can either move this or, if you want to leave it open with the motion on the floor, and then go ahead and amend it, you can do it that way as well.

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Is that the pleasure of the body then?

VICE-CHAIR PONTANILLA: Chair, if we vote this thing down...

CHAIR MOLINA: What, what we'll move on is Condition 4 in the matrix. Yeah.

VICE-CHAIR PONTANILLA: Yeah, and then we'll move on to Condition 4 in the matrix.

CHAIR MOLINA: That, that's the condition that we'll move on as worded in the matrix.

VICE-CHAIR PONTANILLA: Okay.

CHAIR MOLINA: Okay. So, Members, we'll...

COUNCILMEMBER ANDERSON: Wait a minute, Chair, excuse me.

CHAIR MOLINA: Yes, Member Anderson?

COUNCILMEMBER ANDERSON: You know, there are other amendments within this motion on the floor that I think we want to keep in. And if the only language, except one of the things that we added, except as otherwise provided by more specific conditions of zoning, that's a qualifier that we need to keep in here. The only, if the only language within this condition that we're currently

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considering is the bonding language, then the proper way would be for us, we have a motion on the floor, before we take a vote on the main motion someone should amend the main motion to delete and shall not be bonded.

CHAIR MOLINA: Okay, and that is the option that the Chair had presented earlier. So that's...

COUNCILMEMBER ANDERSON: But you called for the vote on the main motion, Chair.

COUNCILMEMBER BAISA: ...*(Inaudible)*...half way there.

CHAIR MOLINA: Yeah. Yeah, I did, but then I also threw up the option for the Committee to consider. So, again, if that is the will of the Committee before we call for the vote to amend as we --

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: --you know, discuss this, then we'll do it that way. Yes, Mr. Victorino?

COUNCILMEMBER VICTORINO: Well, then if that's the case, then I'd like to amend the motion to remove "shall not be bonded".

CHAIR MOLINA: Okay. Is there a second?

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. The motion to amend by Mr. Victorino is to remove the language "and shall not be bonded". And again this is from the Condition 4 that was given to us on Friday --

COUNCILMEMBER MEDEIROS: November 1st.

CHAIR MOLINA: --November 1st. Okay. Mr. Victorino, you have any additional discussion on it?

COUNCILMEMBER VICTORINO: I think this is cleaner. I think we can then move on, and I, I think the will of the body still has some, some other things they want to work on. However, I think this is what's been really the sticking point is shall not be bonded. I think the, that's the consensus I'm feeling from my fellow colleagues. So I think with that we can, you know, move on and see what happens, and then continue our process, sir. Thank you.

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

COUNCILMEMBER ANDERSON: I would like to, I mean we haven't made a, we haven't made a vote on that amendment yet, Chair, have we?

CHAIR MOLINA: No, not yet.



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means they got to do the improvements before they get final. And that, you know, says you can't bond the subject, the subdivision.

COUNCILMEMBER VICTORINO: Mr., Mr. Chair?

CHAIR MOLINA: Hang on. Yes, Mr. Victorino?

COUNCILMEMBER VICTORINO: I'll second the amendment for discussion purposes so that we may move on.

CHAIR MOLINA: Yeah. Okay. Hang on. Wait. She hasn't proposed for, okay, you move, did you say you want to move now?

COUNCILMEMBER ANDERSON: Well, if it's the intention of the body to allow them to bond the improvements...

CHAIR MOLINA: Okay. So you need to present it in a motion then, Member Anderson?

COUNCILMEMBER ANDERSON: I thought I did.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: I move to amend the second, the sentence beginning with "a written certification by the director of public works that the improvements are complete in accordance with the standards established by the County, shall be required prior to issuance of a certificate of occupancy or final subdivision approval" adding "unless improvements are bonded by Honua`ula Partners, LLC."

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. It's been seconded by Mr. Victorino. All right. Member Anderson gave us a description of her proposed amendment. We do have the Public Works Director in the house if, Members, you do want to ask questions of him. Member Baisa, related to the proposed amendment from Ms. Anderson?

COUNCILMEMBER BAISA: Yeah, I'm, I'm concerned about putting the words unless they're bonded, because didn't, wasn't the bonding optional? They could bond or not bond, and it's, we would be making it mandatory if we put that in.

CHAIR MOLINA: I'm not real clear on that. Mr. Hopper or Department, by inserting the proposed language from Member Anderson . . .

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MR. HOPPER: I just wanted to make a comment. I, I'm familiar with a bonded final subdivision approval, but I'm not sure if there's such a thing as a bonded certificate of occupancy. I think you may need to get a, to have the improvements actually completed before a certificate of occupancy is issued typically. I know you can get your final subdivision approval with, by bonding the improvements, and I think Public Works is checking into that now. But it may be a good idea to get rid of certificate of occupancy if you're going to put in the language unless the, "unless they are bonded", because that would only apply to final subdivision approval and not necessarily to a certificate of occupancy which could not be issued based on a bond unless I'm mistaken.

CHAIR MOLINA: Okay. Thank you, Mr. Hopper. Member Baisa?

COUNCILMEMBER BAISA: Chair, I know we're trying to keep it separate what we have proposed ourselves and what the Applicant has proposed, but the language in his proposal might help us work through this.

CHAIR MOLINA: Members, comments on that? Do you want the Applicant to take part in this and for us to consider his language? It's up to the body?

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: I don't know if it's proper, but if we can have Public Works representative, the Deputy Mike Miyamoto.

CHAIR MOLINA: Sure he is here. We did contact him. Can Mr. Miyamoto . . . I know he's outside conferring.

MR. HOPPER: He's trying to find out what I just said.

CHAIR MOLINA: Okay. According to Mr. Hopper he's trying to find out what Mr. Hopper had just explained to us. All right. Well, you know, in the meantime while we await Mr. Miyamoto I'm going to ask the Applicant, Mr. Jencks, to come up and give his comments on the current amendment from Member Anderson while we await Mr. Miyamoto.

MR. JENCKS: Thank you, Mr. Chair. I think, I think Ms. Anderson has a good point with regard to the written certification. As I read it, a written certification by the Director of Public Works that the improvements are complete, in accordance with the standards established by the County shall be required prior to the issuance of a certificate of occupancy or final subdivision approval. You might get by by just deleting "or final subdivision approval", because the issue here is getting people into houses before the improvements are completed. And that's the, the issue of discussion.

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CHAIR MOLINA: All right. Thank you, Mr. Jencks. We have Director Miyamoto here with us. Mr. Director, can you comment on what's been discussed on the floor this morning thus far? We're looking at a proposed amendment from Member Anderson to add language after the word approval in the condition. Member Anderson, can you refresh my memory? So much has been going on I'm getting a hard time to keep track. Just for Mr. Miyamoto's sake.

COUNCILMEMBER ANDERSON: The intention, Mr. Miyamoto, is to allow them to bond each phase of the subdivision. This condition that we're working on was written to not allow them to bond, and we took that condition or that portion out. So now we have to say something about allowing them to bond. So I just added it, if you look about, a little less than, a little more than halfway down, after Kihei-Makena Project District 9 period. "A written certification by the Director of Public Works that the improvements are complete, in accordance with the standards established by the County shall be required prior to issuance of a certificate of occupancy or final subdivision approval." And the amendment adds "unless improvements are bonded by Honua`ula Partners, LLC."

CHAIR MOLINA: Mr. Director?

MR. MIYAMOTO: Mr. Chair, in looking at the County Code the, in the final subdivision section it does allow for the bonding of the improvements. As is, as we've done in other projects, for example, as in the Spencer project that was recently done, we bonded, initially we bonded the whole project, and as the project moved along in phases, and as the improvements were done the bonding amount was removed, was reduced I should say. And so typically that's how it's been handled in this situation. I guess I'd leave it up to Corporation Counsel to make a determination that if in the absence of the language that says they're allowed to bond, by County Code it says that they're allowed, it's an option that they are allowed to bond the, the improvements.

Regarding the improvements, my only concern is that some of the improvements are for State highways, and State highways and the County have different standards also. So, you know, it, it, it may be more for the appropriate body different standards. Maybe, like Piilani Highway is a State highway. We wouldn't, we would certainly not be applying our standards to Piilani Highway.

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

COUNCILMEMBER ANDERSON: You know, I think that we need to kind of pull back here because we've gone, you know, up over the hill, back around, into the cul-de-sac, backed out, come back forward here. If we just go back to our original condition the way it reads and just make the changes that we made except as otherwise provided in more specific conditions that was the one sentence that we put in except as otherwise provided by more specific conditions of zoning. And then the other thing we changed was we added non-potable along with potable. And then I think we've got the languages that was originally written by the Planning Commission and Planning Department, then we don't have to worry about are we putting in double negatives or...

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CHAIR MOLINA: So, but this would still include your amendment proposal; am I correct?

COUNCILMEMBER ANDERSON: We wouldn't need it if we went back to the original. The original said...

CHAIR MOLINA: So would you withdraw your amendment proposal then if that's what you want the body to consider?

COUNCILMEMBER ANDERSON: Well, we'd have to withdraw this whole thing, Mr. Chair. You know, it's up to you, but we have rewritten this condition first to not bond and now we're saying, oh, we're going to let them bond. And the way it's written doesn't really flow necessarily in a, in a, you know, really legislatively correct manner. I mean we even had Mr. Miyamoto confused, and he's been sitting here...

CHAIR MOLINA: So, so let me ask Members and Member Anderson, would it be, I guess the Applicant has suggested we remove the words "or final subdivision approval". Would that address the concern?

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Hang on. Hang on.

COUNCILMEMBER ANDERSON: No, what I'm getting at, Mr. Chairman, is if we just go back to the original, you know, this rewritten condition was rewritten to prevent bonding. It added in nonpotable along with potable use. It added the language because I was concerned that last week that we're putting in conditions here that may be contradicted in other conditions throughout this document. So we put a disclaimer except as otherwise provided by more specific conditions of zoning. So with just those two changes to the original condition, if we just put those changes in, then we're in effect achieving what we're trying to achieve here without having to go back and forth on a rewritten condition.

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

VICE-CHAIR PONTANILLA: Thank you. The motion now is to amend --

CHAIR MOLINA: Condition 4, that we were...

VICE-CHAIR PONTANILLA: --Condition 4 that was passed out on, on November the 1st. I, I think Member Anderson make it real clear that if we --

CHAIR MOLINA: We would have to, I guess...

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VICE-CHAIR PONTANILLA: --if we vote on this vote it down, we come back to Condition No. 4 on the matrix, and I know we already made some changes, and then I, I don't know if it's proper to go back to the original Condition 4 to add on what Member Anderson had just proposed.

CHAIR MOLINA: I believe procedurally, Staff, we would have to ask for a motion to reconsider, because we did pass the, well, we didn't conduct the vote yet; right? Unless we withdraw the motion. There are two motions, one motion to amend --

MS. FRIAS: Yeah.

CHAIR MOLINA: --and one motion to, I guess...

MS. FRIAS: There's a motion to amend the main motion from Councilmember Anderson to replace Condition No. 4 with the revised condition that was sent on November 1st, and then there's a proposed amendment to the amendment to add the words "unless improvements are bonded by Honua`ula Partners, LLC". So the final motion hasn't been, the vote hasn't been taken.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Okay. Can you repeat that, Committee Secretary? What was that? What vote was taken and when?

MS. FRIAS: There is no vote. There was a vote that was taken on one of the amendments, but the main motion to amend has not been, no vote has been taken.

CHAIR MOLINA: Has not been, right.

MS. FRIAS: And there's currently an amendment to the amendment right now.

CHAIR MOLINA: Right. And what we're considering is Condition 4 which was given out on November 1st; right?

MS. FRIAS: Right.

CHAIR MOLINA: To, to use that to substitute the condition that's on our matrix. Now, Mr. Pontanilla, just for your, just to clarify what you're asking, maybe we should go with what was, has been suggested by Member Anderson to go back to the Condition 4 that's on the matrix, and then amend that condition. Okay. I, I kind of thought that's what we had done on November 1st, by coming up with this language, but again if it's up to the body, then I guess the motion to substitute this condition as worded and, you know, replace Condition 4 on the matrix, then I guess withdraw that motion then I guess if that's a consideration, Members. Member Baisa?

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COUNCILMEMBER BAISA: Chair, I support Ms. Anderson's proposal. I think it would be cleaner to just go back to the original motion and make whatever germane amendments we want to, because it's getting very confusing, and this one is clearer.

CHAIR MOLINA: Okay. Thanks, Members. And, Members, in defense of Staff, now Staff just put together what was proposed on Thursday, November 1st, and, and I can concur with you, Member Baisa, it is confusing and frustrating especially when we had the Members that are not here who made those amendments. So being that they're not, I think it's worthy of consideration to just go back to the amendment on the, on the matrix. Mr. Victorino?

COUNCILMEMBER VICTORINO: So, Mr. Chair, if, if I hear you correctly, and, and to make this cleaner I, I would think that if that's the will of the body, then we vote down the amendment, we vote down this Condition 4 which would then put us back to the original Condition 4 which was in the matrix; right?

CHAIR MOLINA: On page four, yeah. That is what...

COUNCILMEMBER VICTORINO: Yeah, instead of withdrawing motions and all that wouldn't it be just cleaner to just say no, no, and then get back to where we were? I asked Staff, and you, if that would be the easier way to do it because, I mean, we're, you know, just keep, you know, keep going back and forth on this.

CHAIR MOLINA: Okay. Thank you. Staff?

MS. NAKATA: Oh, yes, Mr. Chair, I apologize for the confusion. Staff would recommend either one of two things. One, is for Member Anderson to withdraw her motion to amend to delete the phrase "unless improvements are bonded by Honua`ula Partners, LLC", with the approval of the rest of the Committee to withdraw that motion to amend, followed by a withdrawal of Member Victorino's motion to amend to replace Condition No. 4 language distributed November 1st with the language in the matrix; or to take two successive votes on those motions with the body denying those, and then that would put us back to where we were on Thursday.

CHAIR MOLINA: Okay. Which is the, which is the simpler, easier way? Staff, I just wanted to make sure we do this, let's start first with maybe considering withdraw, asking Member Anderson to withdraw her motion to amend by adding that additional language to the Condition 4 on the November 1st document.

COUNCILMEMBER ANDERSON: I'll be happy to do that. I mean I just think two no votes would get us out of this.

COUNCILMEMBER VICTORINO: Yeah.

COUNCILMEMBER ANDERSON: No vote on, on my amendment; no vote on the Condition 4 that was rewritten, and we're back to square one with two quick amendments.

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CHAIR MOLINA: Okay. The Chair recognizes the withdrawal of the amendment from Member Anderson. Any objectives *[sic]*, objections?

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

CHAIR MOLINA: Okay. Thank you, Members. All right. Now we'll go to Mr. Victorino...*(change tape, Side 1B)*... withdraw your motion to substitute the November 1st condition to, to remove the Planning Commission condition on, on our matrix with the November 1st condition.

COUNCILMEMBER VICTORINO: If this will move it on, yes, Mr. Chair, I'll withdraw my motion.

CHAIR MOLINA: Okay. Thank you. All right. Any objections to Mr. Victorino's withdrawal?

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

CHAIR MOLINA: Okay. Thank you. All right, Members, now we are on the condition that's on page four of the matrix. Okay. Now, the Chair will entertain any, well, first of all, would it be appropriate then for us to consider a motion to put it in play, and then we can amend, Staff?

MS. NAKATA: I guess, Mr. Chair, if you would like Staff to read through the condition.

CHAIR MOLINA: Yes, please do.

MS. NAKATA: That Honua`ula Partners, LLC, its successors and permitted assigns, shall be responsible for all required infrastructural improvements for the project, including water source and system improvements for potable and nonpotable use and fire protection, drainage improvements, traffic-related improvements, wastewater system improvements, and utility upgrades, as determined by the appropriate governmental agencies and public utility companies. Except as otherwise provided by more specific conditions of zoning, said improvements shall be constructed and implemented concurrently with the development of each phase of Kihei-Makena Project District 9 and shall be completed prior to issuance of any certificate, certificate of occupancy or final subdivision approval unless improvements are bonded by Honua`ula Partners, LLC, its successors and permitted assigns. Honua`ula Partners, LLC, shall execute appropriate agreements with governmental agencies regarding participation in improvements of infrastructure and public utilities as determined by the agencies."

CHAIR MOLINA: Okay. Members, you've heard the condition read now --

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: --the Chair will entertain, excuse me, Member Anderson?



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**ABSENT: None.**

**ABSTAIN: None.**

**MOTION CARRIED**

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

CHAIR MOLINA: It took a little while, but we got through it. Members, let's just take a ten-minute recess. Meeting in recess for ten minutes. . . .(gavel). . .

**RECESS: 10:12 a.m.**

**RECONVENE: 10:32 a.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18th, 2007, is now back in session. It is 10:32 a.m., Monday, November 5th. All right. Members, it took a little bit, but we moved on Condition 4. The Chair would like to go back to, go up to Condition 11. We had a discussion on it, but we never formally acted on it. That relates to the Little League Field, Condition 11, page seven of your matrix, and also there was a document handed out to you right before we recessed I believe Thursday, November 1st, an update from the Committee Staff on what we've acted on and the status of the other conditions. If you turn to page five on that as well besides your matrix, you can look at the proposed Condition 11 that I believe incorporated some of the suggested language from the Park's Department.

Staff, can you go ahead and read the, I guess the revised Condition 11 that's on page five of the document that was handed out. I guess there's no title to the document, but it's the, I guess an update of all the conditions. Staff, can you go ahead and read that. Members, are we all aware where we're at?

COUNCILMEMBER MEDEIROS: What, what page is that?

CHAIR MOLINA: Page five. The document was never formally dated by Staff, but it was handed out just at the end of the recessed meeting of November 1st.

COUNCILMEMBER VICTORINO: It does say, Chair, at the bottom it says 11/1.

CHAIR MOLINA: Yeah, that's the one that says November 1st. Okay. Okay. I'm accustomed to seeing dates at a higher, in the upper portion of the document. Sorry about that. So it's November 1st, way on the bottom, it says one of nine generated 11/1/07. And we're on page five if you'd like to follow along there, Parks - Little League Field. So, are we all set, Members, so I can have Staff read it out aloud so we know for the record what we're going to be considering? Staff?

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MS. NAKATA: Actually, Mr. Chair, to discuss Condition No. 11, the Members would need to refer to their matrix, their October 22nd matrix.

CHAIR MOLINA: Okay.

MS. NAKATA: On page five of the November 1st document just highlights the fact that this condition, the Committee hadn't yet reached consensus on, the language contained below that the Committee had asked be incorporated as a separate new condition and that was based on the email from the Parks Department.

CHAIR MOLINA: Okay. Members, you heard that from Staff? So, okay, again look at your matrix as well on page seven with Condition 11, and we're also looking at Condition 11 on page five. Again, Staff, this was the condition that was, I guess from the Parks Department's perspective they wanted to incorporate additional language into that condition; am I correct, Staff?

MS. NAKATA: Yes, and the Members had had some discussion on it on November 1st.

CHAIR MOLINA: And there is no formal motion right now with that condition?

MS. NAKATA: That's correct.

CHAIR MOLINA: Okay. So as not to get things confused here, okay, can you just read what's on the November 1st document for the Committee which I requested earlier?

MS. NAKATA: I'm sorry, Mr. Chair, you're referring to the new condition from Parks Department?

CHAIR MOLINA: The November 1st document, page five, Condition 11, yes, the one that states new.

MS. NAKATA: The new condition is that "Honua`ula Partners, LLC, is proposing to develop 6 acres of private parks and 84 acres of open space within the development. Said private park shall be open to the public and privately maintained. Furthermore, said private parks and open space shall not be used to satisfy the park assessment requirements under Section 18.16.320, Maui County Code, or for future credits under said subdivision ordinance. The Director of the Department of Parks and Recreation and Honua`ula Partners, LLC, agree that the park assessment shall be satisfied with an in lieu cash contribution for the entire project. The amounts and timing of payment of said in lieu fees shall be subject to the provisions of Section 18.16.320, Maui County Code."

CHAIR MOLINA: Okay. So, Members, if you recall we did incorporate this as a separate condition and not to be attached to 11 on the matrix. And 11 is the one, on the matrix is the one that we did not take a formal motion on, Staff? Okay. Correct, Staff?

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MS. NAKATA: I believe, I believe where we left off on Condition No. 11 was with the following language on November 1st. "In lieu of the dedication of a Little League Field and related amenities as originally specified in Ordinance No. 2171 (1992), Exhibit 'B', Condition No. 8, and based on current land and construction cost estimates for the, for the Little League Field not less than \$5 million shall be paid to the County. Said amount shall not be credited against future park assessments upon Phase II project district approval for the development of the South Maui Community Park."

CHAIR MOLINA: Okay. Thank you, Staff. All right. Members, so we are considering what's on the matrix with the additional language as stated by Staff. Okay. Are we clear?

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: Any questions before the Chair makes a recommendation to move on it?

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: So Item No. 11 on the matrix this is the Little League Field. So, the, the one that was handed out on November the 1st is going to be attached to that particular condition on 11?

CHAIR MOLINA: Yeah, that will be done as a separate condition, because that was where there was some confusion. Is it Condition 11 or is it separate of Condition 11? It is separate. That, that was a separate condition proposed by Parks.

VICE-CHAIR PONTANILLA: That, that was my understanding that this would be a --

CHAIR MOLINA: Yeah. Yeah.

VICE-CHAIR PONTANILLA: --separate...

CHAIR MOLINA: But, but what we didn't act on, because it had the No. 11, the Chair was a little, got a little confused too, so I wanted to, I wanted to get some clarity. We didn't act on the Condition 11 that's on the matrix.

VICE-CHAIR PONTANILLA: Yes.

CHAIR MOLINA: Because what we did act on was the new condition proposed by Parks. But that's going to be given another number, Staff? Is that we had discussed I believe, and not...

MS. NAKATA: Yes, Mr. Chair.

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CHAIR MOLINA: Right. And not incorporate it or attached to the Condition 11 of the matrix.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: Yeah, so what we're going to act on or consider, considering acting on is the Condition 11 listed in your matrix, page seven.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: With the proposed amended language. Member Anderson?

COUNCILMEMBER ANDERSON: All right. That's what I wanted to clarify, Chair. You're talking about the fourth column 11?

CHAIR MOLINA: That is correct.

COUNCILMEMBER ANDERSON: That changes the amount to 5 million, approximately 5 million.

CHAIR MOLINA: That's correct.

COUNCILMEMBER ANDERSON: Okay. Thank you.

CHAIR MOLINA: Okay. Any other considerations before the Chair calls for a motion? Mr. Hopper?

MR. HOPPER: Just to clarify. So the \$5 million will not be credited against the parks --

COUNCILMEMBER ANDERSON: Assessment.

MR. HOPPER: --assessment?

CHAIR MOLINA: That, that is my understanding.

MS. NAKATA: Yes, the second sentence would read, "Said amount shall not be credited against future parks assessments upon Phase II project district approval for the development of the South Maui Community Park."

MR. HOPPER: Thank you for the clarification.

CHAIR MOLINA: So this is again being considered as a, an in-kind contribution from the developer, I guess, or an addition and not to be counted as part of the developer's commitments that he's supposed to already give.

COUNCILMEMBER ANDERSON: Chairman?

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CHAIR MOLINA: Yes, Member Anderson?

COUNCILMEMBER ANDERSON: In regards to the condition on page, page five, the new Condition 11/1 handout, Members, it says that they're proposing to develop 6 acres of private parks and 84 acres of Open Space within the development. Currently within their, the Project District 9 zoning entitlements, Chapter 19.90, it does say that existing natural drainage ways shall remain as permanent open spaces. Then it goes on to say provided that, you know, structures that do not detract from the natural environment such as retention basins, and culvert, crossings, minor retaining walls shall be permitted. Minimal grading of the project site shall be encouraged in order to retain the existing rolling topography and natural drainage ways.

So Mr. Jencks has called out 84 acres of Open Space in this condition. And so I would like to know from him if we can have assurances that this 84 acres of Open Space reflects all the natural drainage ways being maintained in their natural topography.

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

MR. JENCKS: Mr. Chairman, that is, that is correct. That's the intent of the total 90 acres, 6 acres of park, 84 acres of drainage ways plus included in that are the buffer areas at Maui Meadows and along the Piilani Highway. So the answer is, yes, that's true.

COUNCILMEMBER ANDERSON: So there will be minimal grading of the project site in order to retain the existing rolling topography and natural drainage ways?

MR. JENCKS: The natural drainage ways will be retained in their existing configuration of course. Minimal, minimal grading I, I'm not quite sure how far I can go. It's pretty rugged in areas. We've got to create pads for housing. But the intent is to keep it as, you know, minimize it as much as, because this adds to the cost of, of anything you do. But certainly all the drainage ways, you can't do too much without altering those drainage ways. So the idea is to leave those just as they are and keep those in their existing configuration and form. Absolutely.

COUNCILMEMBER ANDERSON: And so you have no intention of going in and building up with rocks and dirt, building up the natural topography for building pads for view planes and such?

MR. JENCKS: The idea will be to balance any cut and fill on-site to minimize cost and traffic on the Piilani Highway. We will be building in the drainage courses on the makai end of all the drainage ways a series of, of retention basins --

COUNCILMEMBER ANDERSON: Right.

MR. JENCKS: --to slow water down.

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COUNCILMEMBER ANDERSON: But, but you understand that any fill on this property is going to add to the natural topography so that building heights for this project will be measured from the existing or natural topography whichever is lower.

MR. JENCKS: Whichever is lower, that's correct.

COUNCILMEMBER ANDERSON: Thank you, Mr. Jencks. Everybody we got that on the record.

MR. JENCKS: Well, it's in the Code.

COUNCILMEMBER ANDERSON: Yeah, well, we know that. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Members, any other questions for Mr. Jencks related to Condition 11? Okay. Seeing none. Okay, we will go ahead and the Chair will entertain a motion to move on Condition 11 that's listed on your matrix. All those in favor?

COUNCILMEMBER VICTORINO: So moved.

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. Excuse me. So, it's been motioned [*sic*], the Chair's getting a little ahead of himself. Sorry it's Monday morning. Okay. The motion has been moved by Mr. Victorino. Is there a second?

VICE-CHAIR PONTANILLA: Second.

CHAIR MOLINA: Okay. Seconded by Mr. Pontanilla.

COUNCILMEMBER ANDERSON: Wait a minute, Chair. I'm sorry.

CHAIR MOLINA: Member Anderson? So we have a motion of the floor. Okay. The floor is open for discussion. Member Anderson?

COUNCILMEMBER ANDERSON: I'm, I'm just looking at this. Said, approximately \$5 million shall be paid to the County upon Phase II project district approval for the development of the South Maui Community Park. I just wanted to clarify that that's what it said.

MS. NAKATA: Mister...

COUNCILMEMBER ANDERSON: Upon Phase II approval.

CHAIR MOLINA: Staff?

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MS. NAKATA: Mr. Chair, the previous discussion was to amend that condition to read as follows: “In lieu of the dedication of a Little League Field and related amenities as originally specified in Ordinance No. 2171 (1992), Exhibit B, Condition No. 8, and based on current land and construction cost estimates for the Little League Field, not less than \$5 million shall be paid to the County.”

COUNCILMEMBER ANDERSON: Not less.

MS. NAKATA: “Said amount shall not be credited against future park assessments upon Phase II project district approval for the development of the South Maui Community Park.”

COUNCILMEMBER ANDERSON: Could you read that very last sentence again? Said amount...

MS. NAKATA: Shall not be credited against future park assessments upon Phase II project district approval for the development of the South Maui Community Park.

COUNCILMEMBER ANDERSON: Well, that changes what we had here, shall be paid to the County upon Phase II project district approval. I think we need to make that really clear, because it sounds like the way it reads now that it’s not going to be credited as a park assessment.

VICE-CHAIR PONTANILLA: Yeah.

CHAIR MOLINA: Staff?

COUNCILMEMBER ANDERSON: I mean I don’t see that language anywhere that she’s reading.

CHAIR MOLINA: You know what I’m going to do, Members, Staff, I want you to go ahead and type out that and give copies to the Members, and that way it’s a little more clearer to everybody, because I’d rather see something on palapala, on paper, than, you know, okay. I, I’m, I’m both a visual and auditory learner. Sometimes cannot pick up everything via auditory. All right. Members, we’ll take a recess to have Staff to draft the proposed language for Condition 11, and we will come back ten minutes. Staff, ten minutes is sufficient? Okay. We will return at 10:55. Meeting in recess. . . .(gavel). . .

**RECESS: 10:47 a.m.**

**RECONVENE: 11:05 a.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18th, 2007, is now back in session. It is Monday, five minutes after the hour of 11 o’clock, November 5th. Members, during the break we asked Staff to draft Condition 11, which is the condition we’re considering that’s on your matrix. And there were some language changes, and to make it easier for everyone to understand instead of just following auditorily, I guess if that’s the appropriate word, I wanted to put something to help us visual learners understand and follow along. So you

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should have a copy of Condition No. 11 per the Committee discussion on November 1st, 2007. So the Chair will go ahead and read it out for the record again.

“In lieu of the dedication of a Little League Field and related amenities as originally specified in Ordinance No. 2171 (1992), Exhibit B, Condition No. 8, and based on current land and construction cost estimates for the Little League Field, not less than \$5 million shall be paid to the County. Said amount shall not be credited against future park assessments upon Phase II project district approval for the development of the South Maui Community Park.” So that is what we’re considering. Members, questions or comments before we act on this? Okay. Corporation Counsel?

MR. HOPPER: I’m sorry just a suggestion for, for wording purposes. It states that not less than 5,000, \$5 million shall be paid to the County, and then it goes right into the future park assessment. I, I believe a bit less awkward phrasing could be “not less than \$5 million shall be paid to the County upon Phase II project district approval for the development of the South Maui Community Park.” And then the sentence said amount shall not be credited against future park assessments, because the timing of the payment appear, the intent appears to be to have the payment made at Phase II project district approval.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Thank you, Mr. Hopper.

CHAIR MOLINA: You must have been, you must have been an English major I guess, huh. Okay. So, Members, the consideration from the Corporation Counsel is after the word County to insert the word “upon”, and then the words “Phase II project district approval for the development of the South Maui Community Park” period. And then the last sentence shall read, “said amount shall not be credited against future park assessments”; is that correct?

COUNCILMEMBER BAISA: Chair?

CHAIR MOLINA: Member Baisa?

COUNCILMEMBER BAISA: Move to approve the, the new version that Mr. Hopper has made.

CHAIR MOLINA: Okay. Hang on. Before the motion everybody clear on what we’re voting on now with the language inserted by, or recommended by Corporation Counsel? Any objections?

COUNCILMEMBER VICTORINO: But wasn’t there a motion on the floor?

CHAIR MOLINA: Not at this time. There’s no motion yet, Mr. Victorino. Before I recognized Member Baisa for the motion what we’re considering is the language changes from Mr. Hopper --

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COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: --then I'm asking if there's any objections to the language adjustments made by Mr. Hopper.

COUNCILMEMBER VICTORINO: Okay.

MS. NAKATA: Mr. Chair?

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: Okay. Hang on. Staff?

MS. NAKATA: There was a motion pending, so are you considering a friendly amendment or did you want to take a formal vote to amend?

CHAIR MOLINA: We did have a motion before went to break? I'm sorry. Okay. Excuse me.

COUNCILMEMBER BAISA: Oh, I thought we didn't.

CHAIR MOLINA: Okay. We could consider a friendly amendment as well since we did have a motion on the floor. Being that, I guess for conveniences sake, I guess Corporation Counsel is recommending that we just adjust the language so it becomes less awkward. It doesn't seem to be substantive enough to warrant a formal condition. So, Members, we could incorporate it as a friendly amendment, if there are no objections.

COUNCIL MEMBERS: No objections.

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

CHAIR MOLINA: Okay. Member Anderson, you had a question?

COUNCILMEMBER ANDERSON: No, I just wanted to thank Mr. Hopper for this language change which is what I was heading for, and it makes it very clear when the 5 million is due and payable, and doesn't confuse the issue with the way it's currently written. So thank you, Mr. Hopper.

CHAIR MOLINA: All right. Thank you, Member Anderson. And, Member Baisa, again the Chair apologies. I guess we apparently had a motion on the floor before we went to break so...

COUNCILMEMBER BAISA: No problem. Happy to make a friendly amendment. Just trying to move the process.

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CHAIR MOLINA: Okay. Thank you very much. All right. If there is no other discussion the Chair will entertain a motion to support Condition 11 as reworded. All those in favor signify by saying aye?

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay. Thank you. The Chair will mark it 7-0, two excusals Members Johnson and Hokama. Condition 11 moves on.

**VOTE:           AYES:           Councilmembers Anderson, Baisa, Mateo, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:           None.**

**EXC.:           Councilmembers Hokama and Johnson.**

**ABSENT:       None.**

**ABSTAIN:      None.**

**MOTION CARRIED**

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

CHAIR MOLINA: All right. Members, we're moving, inching along slowly but surely.

COUNCILMEMBER MEDEIROS: Chair, question?

CHAIR MOLINA: Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yeah, mahalo, Mr. Chair. So in essence we, we have two Condition 11s?

CHAIR MOLINA: No. No. No. Yeah, not to confuse you, on that document that was handed out on November 1<sup>st</sup> where it says new --

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: --that is a separate condition. If you'll look at 11, in the Parks-Little League Field where it says see matrix, that's what we just voted on. Okay, and then you see below that it says new, that Honua`ula Partners is proposing the 6 acres and 84 Open Space, that's a separate condition.

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COUNCILMEMBER MEDEIROS: Oh, okay.

CHAIR MOLINA: Okay. So what we acted on was the condition that was in the matrix and Staff went and put the, the adjustments to that condition in the matrix that would, and that's what we just voted on.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: Is that clear as mud or reclaimed water?

COUNCILMEMBER BAISA: R-1.

CHAIR MOLINA: R-1 water. All right. We need to inject a little humor here. It's been a tough one. All right. Folks, let's go now to Condition No. 13 for initial discussions on the I believe, Member Anderson, the cultural plan, Condition 13.

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: The Chair plans to recess at 12 for lunch to give you guys a chance to re-energize yourselves. Member Anderson, do you need more time or would you like us to maybe discuss this after the lunch?

COUNCILMEMBER ANDERSON: Yeah, I would prefer that we have Members Johnson and Hokama here after lunch to discuss this possibly.

CHAIR MOLINA: Okay. All right. So noted.

COUNCILMEMBER ANDERSON: Are we going to skip 12, Mr. Chair?

CHAIR MOLINA: Let's see, Members . . .

COUNCILMEMBER ANDERSON: Non-profit play. I thought we got a consensus.

CHAIR MOLINA: Staff, I don't, did we get consensus, Staff, over this? I know there was some discussion on the amount of days for play of the public.

MS. NAKATA: Mr. Chair, the Committee did reach consensus on this on August 20th. However, subsequently the, the Committee Chair had indicated that if the Committee wanted to ensure control over the content of the unilateral agreement that he would recommend requiring

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execution of the unilateral agreement prior to the Committee's recommendation and that part of it has not yet been discussed.

CHAIR MOLINA: Okay. All right. Members, so what we'll do, we'll spend some time, we'll use the rest of our time before we break for lunch to discuss Condition 12. Mr. Victorino?

VICE-CHAIR PONTANILLA: Oh, no, me.

COUNCILMEMBER VICTORINO: No. Mr. Pontanilla.

CHAIR MOLINA: Oh, I'm sorry. Mr. Pontanilla? Any recommendation, additional language to Condition 12?

VICE-CHAIR PONTANILLA: Yeah, you know, we, we just completed Condition 11, and then on, on your handout on November the 1st, we had another 11 there. Why, why don't we just take care of that, and give it a number, and just move on so that we don't have to come back to that one? This is in regards to page five, the top one which is new. It says new.

CHAIR MOLINA: So the new condition, with Parks, you want us to give us a number at this point?

VICE-CHAIR PONTANILLA: Yeah, so we don't reference back to 11.

MS. NAKATA: Mr. Chair, Staff would point out that the Committee did reach consensus on this on October 29th, and would prefer to withhold renumbering the conditions at this point until we have the, the full number of conditions.

CHAIR MOLINA: Yeah, if, if, Members, if you do want to make references to the additional condition from Parks, then just, you know, state the conditions, I guess the 84 acres of Open Space and the 6 acres for private parks. Are you saying that you want to tie this new condition to Condition 12, which is related to ballparks?

VICE-CHAIR PONTANILLA: No. No. No, nothing like that. Just give it a number, maybe 34, 35 or whatever so that, and, and then when we remove some of these then we can renumber everything.

CHAIR MOLINA: Yeah, at, at one point the Chair will present to you an updated matrix with the renumbering so, so as not to get confused. I see Mr. Victorino laughing over there. He's a little perplexed as some of us are too. So let's, Members, let's focus our attention on 12, and we'll talk about renumbering at a later point. Mr. Pontanilla, any discussion on Condition 12, as I guess our golf guru of the Council, you and Member Hokama, you guys are very well versed in that particular area?

VICE-CHAIR PONTANILLA: Not at this time, Chair.

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CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: You know, we got so many conditions that kind of overlap, but, so I don't know where it is, but I know we discussed public play. But it seems to me that this should be included in this condition unless it's somewhere else. And, and I think it's good that we discuss this, because we should see the unilateral agreement as, as you noted, Mr. Chair, prior to any approval. So does anybody remember where we put public play?

CHAIR MOLINA: Mr. Pontanilla, I think I know it's been a while, yeah. We had discussed this back on August 20, August 15th, August 10th, and I believe August 1st. I believe we said it, I believe it was one day a week for public play. I don't, if maybe the Applicant, Mr. Jencks, can help us refresh our memories on...

VICE-CHAIR PONTANILLA: It was one day a week, but probably on a Monday. I'm not too sure.

CHAIR MOLINA: Yeah, I was just about to ask the, the specific day.

COUNCILMEMBER ANDERSON: Yeah, but I, I think it was another condition in here, because...

MS. NAKATA: Mr. Chair?

CHAIR MOLINA: Staff?

MS. NAKATA: It was incorporated as one of several revisions to the unilateral agreement, and we did get a revised unilateral agreement distributed to the Committee from Mr. Luna.

COUNCILMEMBER ANDERSON: Yeah, but that's the problem is, you know, do any of us have that unilateral agreement in front us? We need to have it on this matrix so that we know the conditions that we're accepting in their totality. So maybe, excuse me, if Staff could pull out the unilateral and give us the language so we can include it in this condition.

CHAIR MOLINA: Staff, you have that information available regarding the unilateral agreement?

MS. NAKATA: I'll check for the date.

CHAIR MOLINA: Okay. Okay. Members, please bear with us. But recapping I believe it was one day a week and it was not real clear if it was a Monday or a Tuesday. I know Mr. Pontanilla is looking back at his notes, a ton of notes. Mr. Jencks, do you have any comments that you can offer the Committee from your recollection about what was discussed?

MS. NAKATA: Mr. Chair, it was received on August 23rd, 2007, from Mr. Luna. I believe we redistributed it to the Committee recently as well.

CHAIR MOLINA: So it might be in binder seven, August 23rd?

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MS. NAKATA: Yes, Mr. Chair.

CHAIR MOLINA: Mr. Jencks, anything to add?

MR. JENCKS: No, I do recall, Mr. Chair, that we did provide for public play one day a week, and I, my recollection was there was also some comment, I think Ms. Anderson brought up about use of the, the facilities, and I do have a copy of the, the agreement here in front of me. It does talk about non-profit play per quarter of the calendar year, other than Maui Junior Golf, the use of golf course and the clubhouse for a fundraising activity. It talks about the Maui Junior Golf Program, the play, the instruction, and the equipment, and the private lessons, discounted rate of 50 percent. It also talks about Maui Interscholastic League and the Hawaii High School Athletic Association to each use the golf course once per year for an official MIL Golf Tournament. That was discussed in Committee as well.

And then “D” on the declaration, Exhibit 2, says “developer shall permit Maui residents to...(change tape, Side 2A)...charge for the Maui residents for green fees, including golf club rental fees shall not exceed 50 percent of the green fee rates, including golf cart rental fees charged to non-Maui residents.”

CHAIR MOLINA: Thank you, Mr. Jencks.

COUNCILMEMBER ANDERSON: Could you read that slower please so we can get that in this condition?

CHAIR MOLINA: Okay. Mr. Jencks, can you go ahead and repeat at a slower speaking rate?

MR. JENCKS: “D”, Exhibit 2...

COUNCILMEMBER ANDERSON: Or maybe you could just give it to Staff and she can type it into the condition --

MR. JENCKS: Sure.

COUNCILMEMBER ANDERSON: --if that’s what we agree to?

CHAIR MOLINA: Members, have you found that August 23rd document from Mr. Luna in your binders?

COUNCILMEMBER VICTORINO: No.

CHAIR MOLINA: And we’re still consulting with Staff to locate that document.

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MS. NAKATA: Mr. Chair, Staff would just note that incorporating paragraph "D" would just be one of several revisions that the Committee made and requested that the developer incorporate into the revised unilateral agreement.

CHAIR MOLINA: Okay. Thank you, Staff. Okay. Members, what is the pleasure of the body as it relates to this Condition 12?

COUNCILMEMBER ANDERSON: Chair, none of us have a written, it's difficult to vote on something that you don't have it written in front of you to know exactly what you're voting on.

CHAIR MOLINA: Yeah.

MS. NAKATA: Chair, would you like Staff to make additional copies?

CHAIR MOLINA: Yes, please. Okay. Members, we'll take a short recess, and then we'll go and get these printed out for you again in, again on palapala so we have a clearer understanding of what we'll be voting on. Okay, meeting in recess for ten minutes. We shall reconvene at 11:30. . . .(gavel). . .

**RECESS: 11:20 a.m.**

**RECONVENE: 11:30 a.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18th, 2007, is now back in session. It is 11:30. Thank you very much, Members, for that break. We had Staff copy the unilateral agreement, which was part of an August 23rd letter. And I think what caused some confusion, I guess at the start of this letter it, it indicates the developer's response to the water issues. So when many of us were going over it we thought it was just having to do with water, but apparently there was more attached to the letter. So it has been located, but we made sure that we have copies for your own perusal as well, so you don't have to keep dealing with this humungous binder, one of eight binders for this project.

So, anyway, what, what we are considering is I guess, Member Anderson, is asking us for a consideration other than what has been suggested to you by the Chair. One consideration I've asked you is to require that the execution of the UA, the unilateral agreement, take place prior to the Committee's recommendation, and I believe Member Anderson had another consideration for us to consider. So that is where we're at, at this point. Member Anderson, anything else to add?

COUNCILMEMBER ANDERSON: What condition are we at, Chair?

CHAIR MOLINA: Condition 12.

COUNCILMEMBER VICTORINO: Still there.

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CHAIR MOLINA: And we're looking at the November 1st document, or the Chair is looking at the November 1st document. Condition 12. And we had copies of the unilateral agreement copied for everyone as well. So we're looking at both documents.

COUNCILMEMBER ANDERSON: Okay. So our 11/1 handout has the most recent consensus condition taken from the matrix; is that right?

CHAIR MOLINA: That, that is my understanding. That is correct.

COUNCILMEMBER ANDERSON: And so in their unilateral they further spell out more specific I guess conditions, for lack of a better word, on, you know, the ages of the youngsters they're going to teach, how many days a week this will happen for the youngsters, and some black out dates, private lessons at 50 percent the regular rate. And, and all that's well and good, but the reason I wanted us to add to the condition that we're looking at here, Chair, Item No. D is because, and I think C and D is what we really need to add, because Condition 12 on our handout of 11/1 really only speaks to the Junior Golf Program. And in C, the condition we added, said that, I think this was Mr. Victorino's, that MIL and Hawaii High School Athletic Association shall each use the golf course once per year for an official MIL tournament or an official HHSAA golf tournament. So I think we need to add that into the condition. And then, D, developer shall permit Maui residents to play at the golf course one day a week. The charge for Maui residents for green fees, including golf cart rental fees shall not exceed 50 percent of the green fee rates including golf cart rental fees charged to non-Maui residents. So I would make a friendly amendment or whatever we need to do to add both C and D into Condition, Condition 12.

And the reason I think that's important, Mr. Chairman, is these conditions that run with the land or run with the entitlement are more easily accessed. You know, as this project moves down the road, should it get approved, there'll be so many different people involved in implementing these conditions over the years and the conditions will be actually spelled out in the County's KIVA system. So anybody at Public Works who's reviewing anything for this project they'll see these conditions, and they will be attached as a letter of approval, whereas the unilateral agreement, is not all that readily accessible. Maybe Ms. Suyama might want to speak to that, but it's generally just recorded with the Bureau of Conveyances and may or may not be that, I mean generally to tell you the truth, I've never seen a unilateral agreement calling out conditions that aren't already specified as conditions in the zoning. It was always my understanding that they were one in the same -- the unilateral deeding the conditions against the property. So I think it's kind of strange that we have a unilateral that spells out conditions more, more specific than what we actually have on the zoning.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Deputy Director Suyama, do you care to comment?

MS. SUYAMA: In the project district process there's a provision in the Code that allows the Council, prior to adopting the project district, to, to make sure that any unilateral or bilateral agreements that are necessary to implement the project districts are executed prior to approval. It's the same

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thing as if you were doing a unilateral agreement as part of a conditional zoning in the sense that these agreements are recorded against the property. It becomes a restriction to the property to any future landowner.

In terms of enforcement the Department, because more and more there are unilateral agreements that are being executed especially in terms of not only the Council conditions, but in terms of like the Planning Commission conditions, we are starting in the office to now scan in the unilateral agreements and attach it as a document in the KIVA system so that in the future when people are, you know, or other people that are looking at the applications or the property will know that there are certain restrictions that have been placed on the development or the, or the subject property so that in the future people have access to those agreements. And we've been doing that within the last year. So, you know, whether you do it as a Conditional Zoning or as a unilateral, separate unilateral agreement that we review we will at some point in time once it's adopted start attaching it in the KIVA system, which is the permit tracking system.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: I'm wondering if Mr. Hopper could answer my question as to why we would have more specific conditions within the unilateral than we have in the conditions that we're actually adopting, you know, with, with this project should it pass? And, and, and if it would not be prudent for us to have this agreement, once the Council's finished, have this agreement signed. I guess it's going to have to be anyway between first and second reading, but that's the main question, Mr. Hopper.

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: Well, as, as I understand it the, there's a few kinds of, a few different kinds of unilateral agreements that might be relevant for Changes in Zoning. You have the general unilateral agreement that's recorded against the property that's required by the, if there's any Conditional Zoning, and then that's, that's recorded on the property and basically, as I understand it, mirrors the conditions that, that you recommend and that you pass. And, yes, it's true in those, that case that those conditions should basically mirror word for word the conditions that you pass. Now, there's other unilateral agreements that may be executed, that may have to be executed between the developer and other entities, not just the County Council. For instance the, the Parks Department, or the Public Works Department, or other types of unilateral agreement that may spell out other types of things in addition to just the conditions of zoning.

I think in this case, in fact you're dealing with a condition of zoning that, that states that there'll be a unilateral agreement entered into at a future date, and, and I'm not certain if you're, if you're looking at right now specifying what needs to be in that unilateral agreement when it's entered, well it's not really entered into with the Department, it's basically, since it's unilateral it's an agreement with the developer only technically. That the, that the unilateral agreement which is, you know, basically reviewed by the, the Department would spell out things that would be perhaps more specific than the conditions of zoning themselves. That's, that's done, for

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example, if, you know, with the, the Parks Department at subdivision approval if there needs to be, you know, it could specify the, a unilateral agreement for a privately owned and maintained park, for example, could be involved in, in a unilateral agreement where the unilateral agreement specifies that it will be held subject to being open to the public or for Park's purposes, and that's when that's completely separate from what you have in your conditions of zoning.

So, you know, you, you have discretion to, to deal with these unilateral agreements, the form of them ahead of time now if you're going to have them dictate what you believe to be more specific things than the condition of zoning, but if you can specify it as a condition of zoning and put that all in one unilateral, unilateral agreement that's, that's I think a good idea.

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

COUNCILMEMBER ANDERSON: Yeah, thank you. Thank you, Mr. Hopper. Because, you know, first of all, Members, if you take a look at this unilateral agreement there's, there's nothing in here that says that this agreement is between the Department of Parks and Recreation and the developer. It's just a unilateral agreement signed by the developer and approved as to form and legality by Corp. Counsel, but there's no signature in here from the County stating that this is an agreement between the two of them, Parks Department or the County. It just says that it is expressly understood and agreed that until released in writing by the Department of Parks and Recreation, the conditions imposed in this declaration shall run with the land.

And, you know, I don't like that language either, Mr. Chairman, "until released". You know, that means we put in a condition, Members, and down the road, five years down the road, ten years down the road they can go to the Parks Department and say, well, you know, this Junior Golf Program isn't working out so hot, and we've had problems with these MIL things and they're not working out so good, and the one day a, one day a week play isn't working out so good either, because nobody's showing up. Well, nobody's showing up because it's not advertised, because who knows why. And they can go to the Parks and just between the two of them do away with these conditions that the Council's put in place.

So I'd like to see the conditions, you know, spelled out as much as possible in the conditions that the Council is adopting in their unilateral agreement. You know, that adds represented Honua'ula Partners shall execute a unilateral agreement. Well, you know, that's pretty ambiguous, Members, as represented. If it's what they're representing in this unilateral then let's put it in our condition, and let's have the Parks Department sign off on it before second and final reading -- any unilateral agreement that does not give the Parks Department the unilateral authority to release these conditions that the Council is imposing. You see where it says that on page three, Chair, of the unilateral?

CHAIR MOLINA: Yeah. Okay. Mr. Hopper?

MR. HOPPER: Just, just as a comment I would, I point out, well, first of all a unilateral agreement means that there's only one party signing to the agreement. It may be agreeing to something that

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is on behalf of the, or that, that benefits the Parks Department, but if it's with the Parks Department it's a bilateral agreement --

COUNCILMEMBER ANDERSON: Right.

MR. HOPPER: --and both parties sign the agreement. Secondly, I, I don't know all of the details here, but it may be that at this point, at this stage in the development that it's not really certain what, what, what exactly the conditions would be of, of either non-profit or play that's open to the public and that it might not be feasible to do at this point. I'm not certain if that's true. It would be true that if it was a, if, if, as a condition of zoning there were specific play requirements that in order to alter those unless the conditions so specified the developer would have to come back through Council and the Planning Commission to have those conditions changed.

COUNCILMEMBER ANDERSON: Exactly.

MR. HOPPER: So that may be one reason why the, the language as it currently states is that it's going to be through unilateral agreement and dealt with, with the Parks Department which may have more flexibility but, you know, of course that's, that's up to you how you want to handle those types of conditions.

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

COUNCILMEMBER ANDERSON: And, and, Chair, that's just the point. And thank you, Mr. Hopper. That is just the point is that, you know, Members, we are accepting this condition in lieu of a condition that currently runs with the land saying that 50 percent of all tee times shall be for Hawaii residents and that, that fees shall be 50 percent of the going rate, or the market rate, or the private course rate, or whatever it is. So and that runs with the land. That's what a previous Council imposed on this project that if you want to build two golf courses one of them is going to be for play for our residents, and they are going to get, you know, a kamaaina rate. And so they don't want to do that anymore, so in lieu of that they are proposing this condition to us, and yet it's being presented in a very vague way that says they're going to make an agreement with the Parks Department for all these conditions. And then you look at the unilateral and it says the Parks Department can release them from these conditions. So, Members, let's, you know --

CHAIR MOLINA: Add more specificity.

COUNCILMEMBER ANDERSON: --take charge and make sure that these conditions are part of the conditions that we are approving with the zoning and that, I mean I don't think we should make a condition that says we're conditioning them to make an agreement with somebody to fulfill conditions that we think are important. If they're important enough to us to trade off what's already a requirement of them, then it should be a condition that, a condition that the Council is imposing and that we have the right to make any changes to it not somebody in the Parks Department.

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CHAIR MOLINA: Okay. Thank you, Member Anderson.

COUNCILMEMBER VICTORINO: Mr. Chair?

MS. NAKATA: Mr. Chair?

CHAIR MOLINA: Hang on, Mr. Victorino.

COUNCILMEMBER VICTORINO: All right.

CHAIR MOLINA: Staff?

MS. NAKATA: Staff would just point out that in the request for a revised unilateral agreement the request did contain the Committee's request that all references to the Department of Parks and Recreation's ability to release, amend, or modify in any way the covenants, conditions, and/or restrictions set forth in the UA be removed, and if this one phrase remains that that may have just been an oversight which should be removed as well.

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

COUNCILMEMBER VICTORINO: So if I understand correctly, Carla just said that they don't have the right to make the change it will still have to come back to us?

CHAIR MOLINA: Staff?

MS. NAKATA: That phrase should have been removed pursuant to the Committee's request. And so, it, it, the UA should be further revised.

COUNCILMEMBER VICTORINO: Okay. Yeah, because I agree with Member Anderson that, you know, what we decide here today, because we've had experiences with the Parks Department and their Directors making agreements that later on we find out were not really in the public interest. I mean we've all had those dealings. And, and only in a short time I've had enough dealings with that that, yes, I agree. I, I would like to see C and D, if that's what Member Anderson is proposing is, and put that in as specific conditions that cannot be changed I would support that if that's what she's proposing. And no offense to the developer or anybody, but I don't think I'd like to have a department be able to make unilateral, make decisions for the rest of us. So I would support that if that's what we're asking to do, Mr. Chair.

CHAIR MOLINA: Thank you very much, Mr. Victorino. So, Staff, just for procedure sake did we, we receive general consensus on the condition? I'm just wondering with Member Anderson's recommendation, which I can support as well, would it be better we do a formal clean motion, or can we just incorporate it as a friendly amendment? I'm just trying to figure out which is the best and cleanest way to go about this.

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MS. NAKATA: The Committee could move to amend, but Staff would question whether the amendment would be strictly relating to paragraph C and D in the declaration attached as page seven to the revised UA, or would, would the Committee be recommending that all of those conditions A through D be incorporated?

CHAIR MOLINA: Okay. So those are our options at this point.

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: If it's in the unilateral agreement we should make it as a part of the condition A to D.

CHAIR MOLINA: So we're talking about adding the...

COUNCILMEMBER ANDERSON: Exhibit.

CHAIR MOLINA: Exhibit.

VICE-CHAIR PONTANILLA: . . .*(Inaudible)*. . . to make it very clear.

CHAIR MOLINA: Uh-huh. Okay. So incorporate language that reflects that then? Okay. The Chair is open for incorporation of that language.

COUNCILMEMBER ANDERSON: So moved.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. It's been moved by Member Anderson, seconded by Member Victorino to incorporate language that reflects the conditions for the golf course, specific, specific conditions A through D. Okay. All those in favor? Is there any discussion? I'm sorry. Member Pontanilla?

VICE-CHAIR PONTANILLA: On Item D where it says the first line, at the golf course one day a week. If we could specify that the golf course on Tuesday of each week, a specific day.

CHAIR MOLINA: Okay. Can I, can I ask Mr. Pontanilla why Tuesday in particular?

VICE-CHAIR PONTANILLA: Well, Maui, Maui Country Club is on a Monday. It will give a lot of opportunities for public play at one private golf course and another day at another private golf course.

CHAIR MOLINA: Okay.

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VICE-CHAIR PONTANILLA: It doesn't matter.

CHAIR MOLINA: Okay. So you're suggesting Tuesdays --

VICE-CHAIR PONTANILLA: Of each week.

CHAIR MOLINA: --Tuesdays of each week. Okay. Forgive the Chair for, for pondering this a little bit, because I'm just thinking what if there's some, that Tuesday conflicts with a potential event that may be occurring at the course.

COUNCILMEMBER ANDERSON: Or what if they change Monday.

CHAIR MOLINA: Yeah, well, yeah, I'm just throwing that out. I'll go whatever the majority of, of Members want to go with this. Member Baisa?

COUNCILMEMBER BAISA: Chair, I understand what my colleague Mr. Pontanilla is trying to do, but not everybody's involved with the Maui Country Club. And, you know, when you get it down to a Tuesday, if you miss a Tuesday you're out of luck. It could be any day. Maybe I want to go on Wednesday. I mean is the golf course intending to set aside a day?

VICE-CHAIR PONTANILLA: Yeah.

COUNCILMEMBER BAISA: And do we know what they're thinking?

CHAIR MOLINA: Yeah, that's what we're pondering right now is, well, already with the condition they have to set aside one day of the week that --

COUNCILMEMBER BAISA: Right.

CHAIR MOLINA: --that we have to determine what, which day of the week or do we want to be specific or not. You know, so again that's, that's something we have to decide. And, and later on I'll ask Mr. Jencks to offer some insight into this as well.

COUNCILMEMBER BAISA: Well, not being a golfer I know golfers will golf every day of the week if they can. I live with a golfer. But I don't know if the specificity is, is appropriate. That's what I'm concerned about.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, you know, I like Member Baisa am not a golfer, but it seems the rationale that Member Pontanilla is using I think more people would benefit from that. If one private golf course already allows public play on a Monday it extends for more play by making the other golf course on another day, and he's suggesting Tuesday. So I think that's a good idea. Thank you, Mr. Chair.

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CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Mr. Jencks, can I ask you for some comments?

MR. JENCKS: Certainly, Mr. Chair.

CHAIR MOLINA: Thank you.

MR. JENCKS: Yeah, we talked about it. You know, we, in Committee we talked about which day of the week, one day a week. And discussing with Steve and with Joe briefly the issue of Maui Country Club offering another day so that you don't have a conflict, and if you want, if you, if you want to play on Monday, and you want to play on Tuesday you can do that. So it's okay with us to designate a day. Tuesday's a good day, and then you don't have a conflict with Maui Country Club. It makes sense.

CHAIR MOLINA: Member Baisa?

COUNCILMEMBER BAISA: Mr. Jencks, what about Wednesday? A lot of offices, doctor's offices and things close on Wednesday. Why, and I'm trying to understand why Tuesday, I guess that's, that's what I don't get.

MR. JENCKS: It was the day after Monday.

COUNCILMEMBER ANDERSON: Maybe they need a day of rest.

COUNCILMEMBER BAISA: Maybe they need a day to, with a honey do list.

MR. JENCKS: Wednesday is fine.

VICE-CHAIR PONTANILLA: It doesn't matter.

CHAIR MOLINA: Okay. We say Tuesday, Wednesday. Mr. Victorino, you want to give your comments?

COUNCILMEMBER VICTORINO: Well, you know, I'm not a golfer either. I'm not one of those that go all the time anyhow. I pretend like I know what I'm doing, but that's a good pretend. What about a weekend day? And again, you know, a lot more people are available on weekends, you know. And grant you I know Saturday's a lot of times there's tournaments on Saturdays. But Sundays, you know, a lot of people have that even though it's a day of worship and all that, but I know a lot of people that like to go Sunday afternoons and golf. I don't know. What do you think? You're the man.

MR. JENCKS: I'm the man, huh.

COUNCILMEMBER VICTORINO: Yes, sir.

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MR. JENCKS: Well, you know, we, we were talking about the management of the golf course and how we would accommodate public play, and it seemed to be in, in, you know, being consistent with other similar facilities on Maui and Maui Country Club is the only one that's an ownership club, providing a day in the week seemed to make a lot of sense.

COUNCILMEMBER VICTORINO: Okay.

MR. JENCKS: For the number of players, the demand, it just seemed to work out that way.

COUNCILMEMBER VICTORINO: Well, I, I, like I said, I'm just looking at considering a weekend day where, you know, again not everybody can be off on Monday, Tuesdays, but again, you know, I'm just looking for another alternative, you asked, and just for consideration, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Member Baisa?

COUNCILMEMBER BAISA: And maybe the suggestion coming from Member Pontanilla who is a golfer there is merit to it. So, you know, no big deal.

CHAIR MOLINA: Okay. Well, so that would be a consideration to amend the amendment to specify that the one day a week be Tuesday; am I correct, Mr. Pontanilla? So are you going to do that as a formal amendment then?

VICE-CHAIR PONTANILLA: Yes, Chairman.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: So, all right. There's been a motion by Mr. Pontanilla, seconded by Mr. Victorino to amend Member Anderson's amendment to incorporate Conditions A through D that the golf course shall, shall permit Maui residents to play Tuesdays.

VICE-CHAIR PONTANILLA: On Tuesdays of each week.

CHAIR MOLINA: On Tuesdays of each week. Everybody got that?

COUNCILMEMBER BAISA: Got it.

CHAIR MOLINA: Okay. Any further discussion on the amendment to the amendment?

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: Member Anderson?

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COUNCILMEMBER ANDERSON: On Tuesday of each week. I would have said every Tuesday, but whatever.

CHAIR MOLINA: . . .*(Inaudible)*. . . about that one.

COUNCILMEMBER ANDERSON: But that's fine. So I want it real clear, Mr. Jencks, this is a private course, and you're going to be charging membership fees in order for your private membership to play on the golf course. So if we're going to allow Maui residents . . . are we in any kind of legal quandary, Mr. Corporation Counsel, by calling out Maui residents instead of Hawaii residents? Maybe you want, want to think of that for a minute, 'cause that just came up to mind.

CHAIR MOLINA: Okay. Mr. Hopper, any comments?

COUNCILMEMBER ANDERSON: But my, I'm going to let him think about that for a minute while I get to my real question. And that is, because I just noticed Maui residents and in the previous condition it was Hawaii residents. That we've got the charge for Maui residents for green fees, including golf cart rental fees, shall not exceed 50 percent of the green fee rates, including golf cart rental fees charged to non-Maui residents. Is there going to be any membership fee for these residents to play?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: No.

COUNCILMEMBER ANDERSON: So we should have something in here excluding all membership fees or something.

MR. JENCKS: That's fine.

COUNCILMEMBER ANDERSON: I, I think we need to have that somewhere in here, Chair.

CHAIR MOLINA: Okay. So excluding membership fees...

COUNCILMEMBER ANDERSON: So that the charge to Maui residents, charge to non-Maui, and shall exclude all membership fees at the very end.

CHAIR MOLINA: Okay. Can you restate that for Staff? Staff, you got that? The charge to Maui residents shall exclude membership fees.

COUNCILMEMBER ANDERSON: At the very end of the sentence where it says charge to non-Maui residents comma, and shall exclude all membership fees.

CHAIR MOLINA: Okay.

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COUNCILMEMBER ANDERSON: I would like to make an amendment to add that if I could?

CHAIR MOLINA: Okay...(change tape, side 2B)...

COUNCILMEMBER VICTORINO: So I guess we need a second for the amendment.

COUNCILMEMBER ANDERSON: Well, before I do that I was just going to ask if we could get an idea from Corporation Counsel if it's okay for us to just say Maui residents --

CHAIR MOLINA: Okay. Mr. Hopper, have you had enough time to...

COUNCILMEMBER ANDERSON: --rather than Hawaii residents.

MR. HOPPER: I don't see a problem off-hand. What's done at the, the County course has kamaaina rates; correct? Is it based on Maui residency or Hawaii residency, just out of curiosity as a precedent?

COUNCILMEMBER ANDERSON: It's...

CHAIR MOLINA: Mr. Pontanilla, I think as our golfing guru you could give us your insight.

MR. HOPPER: Well, I'm trying to look it up now.

VICE-CHAIR PONTANILLA: Yeah, for Waiehu Golf Course we do have Maui resident and then we do have Hawaii resident. And, yeah, those are separate.

MR. HOPPER: Okay. I mean, you know, I, I, as I'm saying off-hand I don't see any problems with it, but I can look into it a bit more. But if we have done that in the past there's a good chance that we've looked at that in the past before and said it was okay. So I'm just not an expert off-hand on, on that particular issue.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Okay. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah, and, and in talking to our guru over here since everybody gave him that name he says that the Maui Country Club is open to public play; is that correct? Yeah, Mr. Pontanilla. So public play which now, you know, there, there's that gray line now, because I understand Waiehu because it's a municipal court, course I should say. We have that right to, to, to put that. This is still a private course. Now, how far can that go? And I guess maybe 'cause we're getting close to lunch maybe we could have Mr. Hopper look into that matter, and then after lunch discuss it more further. But I think, I, I really think that we got to look at the public, Maui resident, you know, how we do that, because I just hate to have any

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problems later on. And again Mr. Jencks is willing to work, let's, let's get it right and, and make sure the condition matches what I feel should be fair. And I think public probably is fairer than Maui residents, but I'm not really sure and maybe Mr. Hopper can, can look into that matter and get back to us after lunch.

COUNCILMEMBER ANDERSON: Yeah, and Chair, --

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

COUNCILMEMBER ANDERSON: --I concur with Member Victorino, because really what we're asking for is the ability of non-membership people to be able to play on the course. And the "public" means it could be any Maui resident, any State of Hawaii resident, any visitor here. And you know that might work out better for the developer, because then it's more inclusive of non-membership play, and then they're more likely to have a full day of players that could offset the loss in fees that they're going to have during this one day. But then, of course, I'm not a golfer either and maybe Mr. Pontanilla could tell us, you know, is there ever, you know, at, at Maui County Club is there ever a public day where there's so much visitors playing that residents don't get a tee time?

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: On a Monday it's open to the public, and then members of the club also plays on Monday if they can get a tee time.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: Well, I don't know, what did, what did he say 396 tee times in a day? I mean I would just hate to have the residents not get to play because all the visitors down there are all flocking in.

VICE-CHAIR PONTANILLA: I agree with you.

MR. JENCKS: Mr. Chair?

VICE-CHAIR PONTANILLA: And for Maui residents would be basically Maui residents.

CHAIR MOLINA: Okay. Mr. Jencks, has a follow-up to...

MR. JENCKS: Yeah, I was just going to say there are already, there's already a condition on the land that ran with the rezoning for the golf course originally, and I think that said Hawaii residents.

COUNCILMEMBER ANDERSON: Yeah, it said Hawaii residents.

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MR. JENCKS: So why don't you just stick with that? I mean that's what you have already, and this, it'll, it, it mimics what you've got here with regard to reduction in fees, cart fees, and we'll just stick with that and make it Hawaii residents, and you've, you've covered I think pretty much everybody you need to cover and there was some wisdom in that.

CHAIR MOLINA: Okay. Member Baisa?

COUNCILMEMBER BAISA: I support the, the developer's recommendation. I would like to see this privilege extended to our Hawaii people. I think that, you know, I care very much about our visitors, they're our most important asset obviously, but I think we need to save some things for us, and I would like to see this privilege reserved for Hawaii residents.

CHAIR MOLINA: So noted. Mr. Hopper, you have a comment? Corp. Counsel?

MR. HOPPER: Just in, in going through the Code about the, our public golf course there is a definition for Maui County resident. It is the longest definition of the definitions. It's very long and very detailed indicating to me that there may have been some, you know, debate or issues with this in the past, and it is a Maui County resident and not Hawaii resident. So just to let you know in your Code you have a definition of what a Maui County resident is, and I believe it's not really actually used in the rest of that section, but I, I presume that that's used in the fee schedule for Maui County residents or Maui County non, or non-Maui County residents in order to differentiate, but, so just to let you know that issues may have come up. I don't know, but they may have come up with people claiming to be Maui County residents, or how they would prove that, or things like that particularly when you get to the specifics of Maui County resident so.

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

COUNCILMEMBER ANDERSON: Chair, just so everyone's aware I'm going to read the condition that was imposed in 1992 still deeded against the land until we change it. That the Applicant make available to Hawaii residents 50 percent of the tee times on one of the two golf courses and charge such Hawaii residents green fees, including golf cart rental fees in an amount not to exceed 50 percent of the green fee rates including golf cart rental fees charged to non-Hawaii residents. So it's Hawaii.

COUNCILMEMBER VICTORINO: Yeah, that's fine.

MR. JENCKS: That works.

CHAIR MOLINA: All right. Members, I'd like you to give the Chair an opportunity to confer with Staff. Two minute recess. Don't go anywhere. . . .(gavel). . .

**RECESS: 12:07 p.m.**

**RECONVENE: 12:08 p.m.**

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CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18th, 2007, is now back in session. Thank you very much, Members, for that recess to allow the Chair to go over with Staff to determine procedurally how we will move forward with this. Condition 12, as you recall, was, was accepted by consensus, and then Member Anderson today has made a motion to amend a condition that was accepted via consensus. So the Chair had a question for Staff, what is the more appropriate way to move forward with this? Do we first need to make a formal motion to pass Condition 12, then consider Member Anderson's amendment and all the following amendments?

So I was told by Staff that we can go ahead and amend the consensus, the condition as accepted by consensus, and what might be preferable is first to address Member Pontanilla's condition to specify that Tuesdays be the one day of play, and then after, whatever the outcome of that, then we go on to Member Anderson's additional condition, and after all that has been dealt with, then we go back to the main motion which was Member Anderson's original amendment to incorporate A through D.

COUNCILMEMBER BAISA: Great.

CHAIR MOLINA: Okay. Is that a little, I'm just trying to make sure we, even the Chair knows how we go and proceed with this, because it can get a little confusing. I want to make sure we're fine parliamentary procedure wise. So, okay, Members, we've left off, where did we leave off? Member Anderson?

COUNCILMEMBER VICTORINO: Hawaii resident.

CHAIR MOLINA: Well, I'm getting a look from Staff, so is it better that we address Member Pontanilla's condition first via vote, and then recognize Member Anderson again?

MS. FRIAS: Yes, Mr. Chair.

CHAIR MOLINA: All right. Why don't we go ahead and do that. Member Pontanilla's condition or, excuse me, amendment to Member Anderson's amendment is to specify that Tuesday be the day designated as play for the public. Okay.

COUNCILMEMBER VICTORINO: Fine.

CHAIR MOLINA: So that is what's on the floor right now for a vote. Any discussion before the Chair calls for the vote?

COUNCILMEMBER VICTORINO: No.

CHAIR MOLINA: Member Anderson?



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CHAIR MOLINA: Okay. Now we'll go to Member Anderson's consideration of adding the additional language at the end of - is it Condition D, Member Anderson?

COUNCILMEMBER ANDERSON: Yes.

CHAIR MOLINA: Okay. Letter D I should say. All right. Any further discussion? Members, would you like that restated for the record?

VICE-CHAIR PONTANILLA: Yes.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: It's just, we're talking about the charges for Maui residents including golf cart shall not exceed 50 percent, including golf cart rental fees charged to non-Maui residents, and shall exclude all membership fees.

CHAIR MOLINA: Okay. All right. Members, that is the amendment on the floor right now. Any further discussion before the Chair calls for the vote?

COUNCILMEMBER BAISA: Chair?

CHAIR MOLINA: Member Baisa?

COUNCILMEMBER BAISA: When she read it she said Maui residents. So that's what we decided we're going to do.

COUNCILMEMBER ANDERSON: Well, we still haven't --

COUNCILMEMBER BAISA: Oh, we haven't gotten there yet.

COUNCILMEMBER ANDERSON: --we have gotten there yet.

COUNCILMEMBER BAISA: Okay. Well, we'll vote on...

COUNCILMEMBER ANDERSON: That's the way it reads.

COUNCILMEMBER BAISA: Okay.

CHAIR MOLINA: Okay. Members, seeing no other discussion, all those in favor of the amendment signify by saying aye?

COUNCIL MEMBERS: Aye.



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COUNCILMEMBER ANDERSON: How come?

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Because of all the tourists.

CHAIR MOLINA: So basically the, the, so incorporating the Hawaii residents would still give Maui residents a preference over say somebody who came here from Oahu visiting over the weekend or during the week to play golf?

VICE-CHAIR PONTANILLA: No. No, it would be...

CHAIR MOLINA: Okay. I just wanted to get clarity on that. Okay. Member Anderson, does that answer your question?

COUNCILMEMBER ANDERSON: Yeah.

COUNCILMEMBER MEDEIROS: Chair?

CHAIR MOLINA: Okay. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, so Member Pontanilla's amendment would be incorporated in the regular amendment, I mean in the, the motion? Because when, when you read his amendment it said for public play.

CHAIR MOLINA: For Tuesdays, yeah.

COUNCILMEMBER MEDEIROS: Yeah, but public play means anybody. It means tourists, Hawaii residents, Maui residents. So is that what we want in his amendment?

CHAIR MOLINA: That's a good question. Let me ask Corporation Counsel for clarity on that or Mr. Pontanilla himself. It would seem like we would want, you know --

COUNCILMEMBER MEDEIROS: Hawaii residents.

CHAIR MOLINA: --Hawaii residents to have a preference over an out of State resident. Mr. Hopper?

MR. HOPPER: I would just make it clear however you, you want to state it. And, you know, you probably want to have the whole condition read. It would be public play so as to distinguish between members and non-members, and then it would, you would have to, you know, whatever residency requirement you probably want to, you would want to specify that too. In your existing Code you've got in the public course you have Maui County resident, non-Maui County resident, which is actually a Hawaii resident who does not reside in Maui County, and non-resident. You've got three different definitions there just as a, as a potential guide. And for non-

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Maui County resident you have to show you have a Hawaii State driver's license. For Maui County resident there are a slew of additional requirements that you need in order to approve, to prove you're a Maui County resident. But I think the two key elements, it sounds like, is one that it's both members and non-members, and two that it's not every member or non-member, it's members or non-members that are either Hawaii County, Hawaii residents or Maui County residents.

CHAIR MOLINA: Okay. Thank you, Mr. Hopper. Committee Members, you look perplexed like the Chair. The Chair is going to offer you a suggestion right now. It's lunch time. Why don't we leave the motion on the floor and when we return we'll address it? And in the meantime we can work out whatever, I'd like to ask maybe Mr. Pontanilla and maybe Ms. Anderson to join Staff and see what, and Corporation Counsel. Did I say, I said Mr. Pontanilla, was that, I thought I said Member Anderson? Oh, all right. I think it's lunch time. Members, it's 12:15. Let's come back to the Chambers at 1:30, and from there we will act on the motion that's currently on the floor which is to amend or incorporate A through D for the golfing conditions for Condition No. 12. Meeting in recess until 1:30. . . .(gavel). . .

**RECESS: 12:15 p.m.**

**RECONVENE: 1:35 p.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18th, 2007, is now back in session. It's 1:35, Monday, November 5th. Members, we left off on Condition No. 12, and what we had Staff do was put it in writing, so Staff is currently handing it out to you, and we do have a motion on the floor. And the motion is again to amend Condition 12 to incorporate at the end of the existing condition paragraphs A, B, C, and D, as revised, of the declaration, which is attached as Exhibit 2 to the revised unilateral agreement received by the Committee on August 23rd, 2007. So, Members, you will take note of the proposed amendments. And I'll just go ahead and once again read it into the record.

Letter D, "Honua`ula Partners, LLC, shall permit Maui residents to play at the golf course on Tuesday of each week. The charge for Maui residents for green fees, including golf cart rental fees, shall not exceed 50 percent of the green fee rates, including golf car rental fees, charged to Maui, non-Maui residents, and shall exclude all membership fees." So that is where we're at right now and the Chair would consider a motion to amend paragraph D as follows shown in the Ramseyered format. So . . .

COUNCILMEMBER VICTORINO: So moved.

CHAIR MOLINA: Okay. Hang on.

COUNCILMEMBER VICTORINO: Oh, not...

CHAIR MOLINA: Member Baisa?

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COUNCILMEMBER BAISA: Yeah, a question. Let's muddy the water a little bit more.

CHAIR MOLINA: Okay.

COUNCILMEMBER BAISA: As I look at this written down it says the charge for Maui residents for green fees including golf cart rental fees *[sic]*, fees, shall not exceed 50 percent of the green fee rates, including golf cart rental fees charged to Maui residents. It, it's, it's . . .

CHAIR MOLINA: For non, non-Maui residents.

COUNCILMEMBER BAISA: I mean, I mean non-Maui residents. It's kind of wordy. Couldn't, what we're trying to accomplish here, if I get this right, is that Maui residents will not pay more than 50 percent of the customary green and golf cart rental fees.

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: That is my understanding.

COUNCILMEMBER BAISA: But this is kind of wordy. And the other thing is the thing about the membership fees kind of bothers me, because in this business we don't normally charge membership fees to people on golf courses. I mean customarily you go, you pay a green fee, you pay a cart rental fee, but I don't know, and I understand why Member Johnson wants it, because she feels that she wants to make...

CHAIR MOLINA: Member Anderson you mean, I'm sorry.

COUNCILMEMBER BAISA: I mean Member Anderson. I'm sorry. I'm doing it now. I'm learning. You know it, it's kind of overkill is what I'm trying to say, but if it's important that's fine.

CHAIR MOLINA: Okay. Thank you, Member Baisa. And that's a nice segue. We have Member Johnson here joining us for the afternoon session as well. Member Johnson, do you have any comments on the proposed amendment?

COUNCILMEMBER JOHNSON: No, and, you know, basically I guess I would support the, the motion, I support I guess the amendment, but I'm not in support of the main concept of not having it as a public course. That's what my whole thrust was from early on in the discussion is when you had a public course, and, and I, I know that Chair Hokama is not here, but also it being the kind of a golf course that is not just restricted to the membership. I, I just feel that if we're going to use the resources such as water, and, well, basically water is the main one, if we're going to use that, and I guess the gobbling up of open space for a golf course, then I think it should at least be in keeping with the original concept which was to provide, and I believe there were two courses, one for public play, and then one for the members only.

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So I, I just, I have a problem with if there's only going to be one golf course restricting it in any way, because even, there's just ways that people either through times or through days of the week that it would be available for public play there's ways where it can be manipulated in such a way as it eliminates a great many of the people that would otherwise use it. So I know we have our own challenges with our own course, but I mean I'll support the motion to amend, but I'm not in support of the general concept of a private golf course. Thank you.

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

COUNCILMEMBER ANDERSON: I share Member Johnson's feelings about a private golf course. I don't think that we should be excluding the residents of Maui County for anything, but the purpose of this private golf course is so that the developer can charge a million to two million dollars per lot, because there is a market out there that wants exclusive rights to a golf course so they don't have to compete with anybody for tee times. And so that's the purpose behind this exclusive golf course is for the exclusive residents who will be members and living in this exclusive development. So, but be that as it, as it may, and, you know, Mr. Chair, I think that this is very confusing for the public. I've had many calls about this. As we were going through all these conditions and crafting them it makes it sound like we're all in support of this project, because we're crafting these conditions. And especially after the *Maui News* article. And I'm very glad Mr. Hopper addressed that, you know, kind of in a, not in a direct manner, but made it very clear the last time we met that, you know, if we don't feel that this application meets the criteria for approval we are certainly within our purview and our rights and probably our duty to deny it, and we do not have to buy the land. So I'd like to know who, *Maui News* pays for their legal advice, because they should ask for a refund.

But back to the condition, you know, I liked the first condition where it talks about Maui residents. I thought about it over lunch. I talked to about it with several people, and if this is going to be an exclusive golf course, excluding Maui residents except for one day a week, then let's just make it for them. You know, and not open it up to the State because, you know, I could see people, people from all the other islands come over here, the, the ones who can afford to stay at the Kea Lani for the weekend, and they're just apt to come up and, and use this golf course at reduced rates when, you know, if they're at the Kea Lani they can, they can afford the full rate. But the idea is, is that we want the residents of Maui County to be able to play at this golf course. So I would prefer the first D, which I guess we've already approved; is that correct? Because it's got the, and I don't think we need to say non-members, because the last sentence excluding membership fees means they don't have to be members. So that would be the condition I would support, Chair.

CHAIR MOLINA: Okay. You're talking about the first D where it says shall permit Maui residents whereas as the second, I guess amended version of D, brackets out Maui and is proposing to insert non-member Hawaii residents?

COUNCILMEMBER ANDERSON: Right.

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CHAIR MOLINA: Okay. Members, you're all clear on that consideration from Member Anderson?  
Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chair. And, and I would support that too because, you know, this is something that, you know, we're giving up something for Maui, you know, in regards to this particular project. And, and I, I feel that Maui residents should be the only ones that play on this golf course on that one day a week. You know, give the golfers that golf on Maui, that live on Maui an opportunity to golf in, on the golf course. So, you know, I kind of agree with Member Anderson on this one.

CHAIR MOLINA: So, so in essence going back to the, what was the original D, I guess, prior to your amendment for the day of the week, Mr. Pontanilla; am I correct?

VICE-CHAIR PONTANILLA: Yes.

CHAIR MOLINA: Okay. All right. Members, any comments?

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Member Victorino.

COUNCILMEMBER VICTORINO: So my original motion that I made which I think still is floating out there somewhere, not talking, barring Mr. Pontanilla's amendment was incorporating the original D; right if I'm not mistaken?

CHAIR MOLINA: Well, that was, that's part of the declaration form?

COUNCILMEMBER VICTORINO: Right.

CHAIR MOLINA: Yeah, I believe that was, well, I think on the original one it didn't have the Tuesday that's, that's specifying and the...

COUNCILMEMBER VICTORINO: That was the only thing that didn't, yeah.

CHAIR MOLINA: And also the "shall exclude membership fees", the, the amendment that Member Anderson made, yeah.

COUNCILMEMBER VICTORINO: Okay. So we need to incorporate that part; right?

COUNCILMEMBER ANDERSON: No, it's in there now.

CHAIR MOLINA: Yeah, it's, it's in there already. If you look at the first D...

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COUNCILMEMBER VICTORINO: Yeah, I know that. I see that. I see the Tuesday, and I see . . . *(inaudible)*. . . okay. Okay. So we don't have to redo this whole thing again?

CHAIR MOLINA: Only if you guys want to. You know, it's, it's up, up to the body. Member Johnson?

COUNCILMEMBER JOHNSON: Yeah, we do have to address the part where it says charge to non-Maui residents, because if you're taking out the non-Maui resident in the, in the first D, if you're not going to allow public play for non-Maui residents, then what are you going to peg the fee too, and then I would say if you're going to tie the fee to anything make it be commensurate with, you know, maybe charge to non-Maui residents at the, you know, or, or charged to the individuals who utilize the public links. You know, so in other words, tie it to a fee that we already have out there in existence, because my biggest concern is that if, even if you tie it to what the members will be paying, the members may be able to afford substantial amount for green fees, and golf carts, and everything. And even if you do it at resident rates, it's going to be really hard for many of the residents to afford that. And if the individuals who are living around the golf course want the exclusivity then what they'll do is they'll jack up the rates high enough to basically limit public play. So it's just a thought about how you would tie a fee in to something that already exists rather than something that's an unknown.

CHAIR MOLINA: Okay. All right. Thank you, Member Johnson. Members, any comments with regards to the consideration from Member Johnson? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. No, I'm just asking if we limit it to Maui residents can we do that? I mean...

CHAIR MOLINA: Let's ask Corporation Counsel legally if we can...

MR. HOPPER: Yes, I believe so. Again, this has been done with the County course and in that section of the Code it actually defines what a Maui County resident is, again it's a very long definition. So they felt the need, you felt the need as Council at some point to be very specific as to what a Maui County resident was as far as the documentation someone had to provide. Of course, it's a little bit different because it's a private golf course enforcing this rather than the County Parks Department enforcing this but, you know, if, if it would be legal for the government to do it, in my opinion, as was, has been determined in the past it's, it's legal as a condition of zoning as far as I see it right now, yes.

COUNCILMEMBER MEDEIROS: So the County municipal course though they allow non-Maui residents to play there.

MR. HOPPER: Yes.

COUNCILMEMBER MEDEIROS: So, but we can limit this one to just Maui residents?

MR. HOPPER: I think for one day a week I don't see necessarily a problem with that.

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COUNCILMEMBER MEDEIROS: Well, what, what does the time period have to do with whether it's legal or not?

MR. HOPPER: Well, because it's not, you're saying generally it's closed, but if, if you want more detailed research into this as I'm saying right now that this is allowed under the, under the County Code, but if you want some more detailed research into this I would have to spend some more time looking at this, because I don't know all of the intricacies involved in this case and there could be, you know, constitutional concerns, right to travel, things like that --

COUNCILMEMBER MEDEIROS: Right.

MR. HOPPER: -- that I do not believe would come out in favor of saying that this is illegal, but there may be more concerns that there are with the current County course where you're just talking about charging a different rate --

COUNCILMEMBER MEDEIROS: Right. Right.

MR. HOPPER: -- rather than excluding people all together, but again that, that was an original condition in the, I think Hawaii resident was an original condition that has been passed before and acted on by Council in the original application. So, I, I don't, I don't see a distinction between that and going into, you know, the Maui County resident versus Hawaii resident wouldn't really have any difference as far as, as I can see, as far as any constitutional concerns so.

COUNCILMEMBER MEDEIROS: So the County Code that was put into place to define Maui resident for the municipal course; is that correct?

MR. HOPPER: Yeah, and, and I don't see it anywhere else in that Code section. What I believe is done, as I said earlier was that these are, there are different fees as provided in the budget for play for Maui County residents, non-Maui County residents which are State of Hawaii residents and non-residents which are neither Maui County nor non-Maui County residents basically meaning non-Hawaii residents the way that I, that I see it. Non-Maui County resident is defined as someone who has a Hawaii State driver's license, but to qualify as a Maui County resident you have to show more than that to play at the municipal course apparently. Again I'm not an expert, I've never played there, I haven't looked at, you know, all the details required, but I, I believe that there may have been some problems establishing what a Maui County resident is, or maybe that it was so much cheaper that people were actually going and doing, you know, maybe applying for a Hawaii driver's license when they would come here to visit for a few months or something. So I believe that's how that got in there. The Parks Department could probably give you some more information.

COUNCILMEMBER MEDEIROS: Okay. So you don't see a constitutional legal challenge on a private course allowing only Maui residents and not other residents of Hawaii?

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MR. HOPPER: Well, I mean in a private course you would actually have more rights to exclude people than a public course would in general.

COUNCILMEMBER MEDEIROS: But they're not members. You know, you can exclude if you're paying a membership fee to a private course, but the Maui residents are not members of that club or that course. They're just being allowed to play one day a week, which means that course is allowing public play for that day. So why would we, I mean why can we exclude other Hawaii residents?

MR. HOPPER: Well, as I said --

COUNCILMEMBER MEDEIROS: That's, that's my question.

MR. HOPPER: Well, as I said, as I said before, I'm not an expert off-hand in this area. We did pass this condition previously with regard to Hawaii residents. This was years ago and at that time, you know, the documents have to be approved as to form and legality when they're signed off on. As to these conditions I'm not saying this would be the last time we would look at these, but if you want more details...*(change tape, Side 3A)*... whether it's permissible, then we could do, you know, we could do more research into this and, you know, it's going to be a while I presume before these conditions would be acted on finally. You've got to have at least two readings after the conditions are, are finalized, and could look at that issue some more, in more detail.

COUNCILMEMBER MEDEIROS: Okay. Thank, thank you, Mr. Hopper. And I leave it to your discretion, Mr. Chair.

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

COUNCILMEMBER ANDERSON: I have a suggestion to address Member Johnson's concern about the, I mean we don't know what the rates going to be yet at this exclusive golf course, members only, and they probably don't know either. So it could conceivably be 50 percent of what they charge could still be high for Maui residents. So I'm thinking that the charge for Maui residents for green fees, including golf cart rental fees, shall not exceed 50 percent of the average market rate for green fees and golf cart rental fees in South Maui --

CHAIR MOLINA: Okay. So you're...

COUNCILMEMBER ANDERSON: --and shall exclude all membership fees.

CHAIR MOLINA: So you're talking about inserting average market rate?

COUNCILMEMBER ANDERSON: "Average market rate for green fee rates and golf cart rental fees in South Maui." Then that way it's 50 percent of the market rate that people pay in South Maui on an average and not tied to the membership rate of the private course unless, you know,

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Mr. Jencks wants to give us a rate that is for certain at this point, and I don't think he's probably prepared to do that.

CHAIR MOLINA: It might be difficult for him to --

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: --look into the proverbial crystal ball and make a prediction.

COUNCILMEMBER ANDERSON: I mean, you know, if I was his number man I would have worked it out a long time ago because, you know, it's all the bottom line here. But at any rate, so that would mean, Members, we would bracket out after 50 percent of the, bracket out green fee rates including golf cart rental fees charged to non-Maui residents, bracket all that out and insert, "50 percent of the average market rate for green fee rates and golf cart rental fees in South Maui, and shall exclude all membership fees."

CHAIR MOLINA: Okay. Members, you've heard the consideration. Member Baisa, comments?

COUNCILMEMBER BAISA: I, I, appreciate what Councilmember, oh, God, Anderson is trying to do, but it's getting confusing. This whole, the way this condition is, is worded concerns me. First of all, when we talk about shall not exceed 50 percent of the green fee rates, what if this golf course decides that they're going to have several fee structures or tiers? We don't know what they're going to do yet, because we don't have this in front of us. We're not specific about a posted rate, a rate that's usual and customary, established rates; you know what I mean? So we could be dealing with all kinds of rates.

The other thing is, if we try to do an average, like Member Anderson is talking about, how will we do that, when will we do that, how often will we do that, because now you have to stay on top of the market and what's going on with the rates. So I'm kind of concerned about that, because I think the monitoring would be very difficult. I think that the intent here, and what we're trying to do, and we could simply state it, is that the charge for Maui residents who are not members shall not exceed 50 percent of the posted or the current posted rates for, for any services whether it's for green fees, or for golf carts, or whatever it is that we want. But I think we're, we're going to get into trouble if we try to tie it to an average because of the monitoring and, you know, we're not good at monitoring.

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. I think what Member Anderson is trying to get is that because we don't know the rates, and rate changes every year, Makena Resort has a rate for their golfers, Wailea has a rate for their golfers, Elleair has a rate for their golfers. Unless it's specified kamaaina, then you know what the rates, rates going to be on a per year basis. With the

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50 percent on the average of all of the golf courses, you know, that's something that probably can be worked with. But again, you know, it would be up to the people that running this golf course to get that average rather than, you know, us, yeah.

CHAIR MOLINA: True. Good point. Member Anderson?

COUNCILMEMBER ANDERSON: Yeah, this is just an attempt, Chair, to find a way to meet the intent here of what we're trying to do without having any real factual numbers in front of us. And if it's based on 50 percent of the average rate in South Maui, then it's going to be up to the golf professionals, they're going to know what the, everybody else is charging, and then for them to average it out and, and do 50 percent. And if the Maui residents who are taking advantage of this one day a week golf experience, if, if they find that they're charging above 50 percent of the average rate you can be sure they're going to let us know, and it will be the Parks Department who will have to moderate this. They'll just let the Parks Department, or they could tell a Councilmember, hey, this is way above 50 percent of the average rate, and then the Parks Department, because this is a condition that's enforceable. Parks Department will call up the golf course and say, you're \$100 above the average, 50 percent of the average rate. You need to lower your rate for kamaaina. You know, that's the best we can do. And, you know, to just tie it to 50 percent of what their posted rate could be that may be again way above 50 percent of the average rate. Members, Kapalua charges way more than all the other golf courses on the Westside. So, you know, 50 percent of their rate may not be even 80 percent of the other golf course rates. So the whole idea here is to get it to a manageable fee that Maui residents will be encouraged to play.

CHAIR MOLINA: So basically a fee that will not deter them from playing I guess; right?

COUNCILMEMBER ANDERSON: Right.

CHAIR MOLINA: All right. So if, if over time the membership rate is raised to, you know, I don't know anything about what typically what fees for a private golf course would be, and I can only imagine it might be quite exorbitant for people who are on very meager income. So I think, I believe that's the intent.

COUNCILMEMBER ANDERSON: Yeah, and, you know, Chair, you know, they haven't set their rates yet. They gave, they gave us a range, an expected range and that could change to. And from, for the membership fee, just for the membership fee from twenty to thirty thousand, but it could be 50,000. And, you know, Mr. Jencks told us that they're not requiring all the homeowners to be members of this golf course, and they have 390 spots or somewhere around there. And I questioned him the other day, well, what happens if you only get 200 people buying in as members? You know, does that mean you have to raise your rates to pay off the difference? I mean, you know, they're going to do some creative financing to make it work for everybody.

And so I'm just reluctant, reluctant to tie it to whatever their market rate might be, because it's still could be, you know, very high. The idea being that these membership only golf courses are

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for very wealthy people who don't want to have to compete for tee times. They want to be able to play whenever they want to play, whenever they're here. And so they're willing to pay the \$30,000 up to be a member of the golf course. And, you know, if the membership is not fully, you know, if he doesn't, if they're not able to, to sell all the memberships, then that means they're going to have to change, increase their rates to pay for the maintenance of the course. I'm just thinking, you know, that that would be the logical trade-off. So this is just an attempt to make it based on an average of the market rate that everybody pays in South Maui, and I can tell you right now these people that play golf are serious, and if they're going for a 50 percent discount, and they find that it's way above 50 percent of the average rates they'll let everybody know.

CHAIR MOLINA: Okay. Thank you, Member Anderson.

COUNCILMEMBER MATEO: Chairman?

CHAIR MOLINA: Mr. Mateo followed by Member Johnson.

COUNCILMEMBER MATEO: Chairman, thank you. I can support Member Anderson's proposal. I think if the purpose and the intent is to take care of our Maui residents as we have professed, you know, for the last number of rounds and discussions, then I think it would behoove us to not be as specific and inclusive as possible to in fact make their golf experience a lot more realistic by, by keeping it affordable. And I think the average would do exactly that, be able to allow our Maui residents to have the opportunity and play on a course that could or could not be affordable in terms of our local community. So I, I think it's a real good move in us being able to assure that the, the group of people that we want to help is being helped through this particular condition. Thank you, Chair.

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

COUNCILMEMBER JOHNSON: Yes, I'll, I'll support the condition. I think it's as fair and based on as much information as we have at this point in time. So, you know, and, and I agree with Member Anderson. You, you rest assured that people will let us know if it's not being applied accordingly. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Members, any other comments before the Chair, I guess we should, Staff, we should, that should be entertained as a formal amendment. And, Member Anderson, I guess if you can propose it formally to Condition 12, letter D?

COUNCILMEMBER ANDERSON: Okay. "Honua`ula Partners, LLC, shall permit Maui residents to play at the golf course on Tuesday of each week. The charge for Maui residents for green fees, including golf cart rental fees, shall not exceed 50 percent of the average market rate for green fees and golf cart rental fees in South Maui, and shall exclude all membership fees."

COUNCILMEMBER JOHNSON: Second.

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CHAIR MOLINA: Okay. It's been...

COUNCILMEMBER ANDERSON: Move to amend.

CHAIR MOLINA: Okay. Let me double check with Staff. So that's your move to amend; right?

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: Okay. All right. I thought you were going to do another amendment on top of that, so...

COUNCILMEMBER ANDERSON: No, I forgot to say move to amend when I started reading so.

CHAIR MOLINA: Oh, no problem. Okay. All right.

COUNCILMEMBER ANDERSON: Moved to amend as read.

CHAIR MOLINA: Okay. Thank you, Member Anderson.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Okay. It's been seconded by Member Johnson. Any further discussion? We are amending the main motion, right, because we currently have a main motion on the floor to incorporate the declaration to be part of the UA. Okay. Any other discussion? If not, the Chair will call for the vote. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed. Okay. The Chair will mark it 8-0, with one excusal Member Hokama.

**VOTE:**        **AYES:**        **Councilmembers Anderson, Baisa, Johnson, Mateo, Medeiros, Victorino, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:**        **None.**

**EXC.:**        **Councilmember Hokama.**

**ABSENT:**     **None.**

**ABSTAIN:**    **None.**

**MOTION CARRIED**

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

CHAIR MOLINA: And we do have Member Hokama now who's walking into the room to be part of our afternoon festivities here. Thank you. All right. Members, we're back to the main motion as amended, which is to incorporate the declaration of Conditions A through D for Condition No. 12. Member Anderson?

COUNCILMEMBER ANDERSON: Yeah, we're looking at 12 under column 4?

CHAIR MOLINA: That is correct at this time.

COUNCILMEMBER ANDERSON: You know, we've already set, you know, as this reads, Chair...

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Staff?

MS. NAKATA: It may be easiest for the Committee Members to reference the 11/1 handout, because that also includes the sentence regarding timing.

CHAIR MOLINA: Okay. Members, Staff is recommending we look at the November 1 handout, page five, Condition 12, Staff?

MS. NAKATA: Yes, Mr. Chair.

CHAIR MOLINA: Okay. All right. Okay. Member Anderson, you can continue.

COUNCILMEMBER ANDERSON: All right. Well, then I'm going to read 12, and basically what you're asking us to do is to incorporate paragraphs A through D under the declaration as part of this amendment, and leaving the amendment as it reads. And so I got a problem with that, because the way 12 reads, that as represented, "Honua`ula Partners, LLC, its successors and permitted assigns, shall execute a unilateral agreement with the Department of Parks and Recreation to set the terms and conditions for non-profit play and for use of the golf course by the Junior Golf Program." You know, if you want to keep that in we need to re..., redo the language, because we already have the terms and conditions in A through D. And I don't want to see those terms and conditions being any different than what we've already decided they should be. So we could say, "shall execute a unilateral agreement with the Department of Parks and Recreation to set the terms and conditions for non-profit play and for use of the golf course by the Junior Golf Program as delineated below, as delineated in A through D." And that way it is, you know, secured, secured that the terms and conditions will be the terms and the conditions that this Council has already set.

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CHAIR MOLINA: Okay. Comments from Corporation Counsel or Planning regarding Member Anderson's recommendation or suggestion?

MR. HOPPER: Well, I, yeah, if that's your intention that, that's fine. The only suggestion I would say is, is again a, if, if it's a unilateral agreement the Parks Department would, would not be signing off on it. It would be, so it wouldn't be with the Department of Parks. It could be some language like the unilateral agreement in a form acceptable to the Department of Parks and Recreation, or in favor of the County and its Department of Parks and Recreation, or if you want an agreement with the Department of Parks and Recreation it just, it wouldn't be a unilateral agreement --

COUNCILMEMBER ANDERSON: Right.

MR. HOPPER: --it would be a bilateral agreement that would, you know, that the County would sign as well. So those are your options, but it, it wouldn't be a unilateral agreement if it was with, if the Parks Department was a party to an agreement like that.

COUNCILMEMBER ANDERSON: So, Chair --

CHAIR MOLINA: Go ahead. Member Anderson?

COUNCILMEMBER ANDERSON: --we could just say shall execute an agreement, take out unilateral.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: An agreement with the Department of Parks and Recreation to set the terms and conditions for non-profit play and for use of the golf course by the Junior Golf Program as delineated in items A through D. Not, you know, I don't really know why we have to do that. If the Department of Parks wants to have an agreement fine but, you know, the conditions are already set as delineated in items A through D.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: And then if I could continue with the last sentence.

CHAIR MOLINA: Go ahead.

COUNCILMEMBER ANDERSON: The agreement shall be executed prior to the granting of a CO and prior to the opening of the golf course. I think that the agreement shall be executed prior to second and final reading just like any other agreement, because we already know what the terms of the agreement are as this Council has already delineated.

CHAIR MOLINA: Okay.

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COUNCILMEMBER ANDERSON: And, you know, it looks like they've already done it. So it's just a matter of changing a few words and changing it from a unilateral agreement to an agreement between them and the Parks Department.

CHAIR MOLINA: All right. Staff, should it be done in an amendment or can we just incorporate the language without a formal amendment on this?

MS. NAKATA: Would you like Staff to repeat the language?

CHAIR MOLINA: Yeah. Yeah, go ahead and repeat the language first, and then proceed, and then give us a recommendation procedurally whether to formally amend or just, we could just incorporate the language as a friendly amendment.

MS. NAKATA: It sounds as though Member Anderson's motion to amend would read, that as represented, "Honua`ula Partners, LLC, its successors and permitted assigns, shall execute an agreement with the Department of Parks and Recreation to set the terms and conditions for non-profit play and for use of the golf course by the Junior Golf Program as delineated in A through D below. The agreement shall be executed prior to second and final reading. Staff would just note, however, that it's, it's a little awkward to have a condition requiring performance by the time the, the bill itself is passed. I'm not sure if Corporation Counsel has any thoughts on that.

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: I mean it sounds like you want that, I mean, yeah, as I said before the unilateral agreement is typically the one where you just restate the conditions into a unilateral agreement and file that on the property. You know, you, you could, it sounds to me like the intention is to have a condition of zoning that's enforced by the Department of Parks and Recreation. And so you don't necessarily need a separate agreement if you're going to set forth all of the conditions or all of the terms of that agreement as a condition of zoning. It can be enforced as a condition of zoning. That's, that's one way that you can do it. As far as whether or not legally you can have an agreement executed, you know, where it's, the, the timing is that you perform it prior to actually the conditions being imposed that's, that's a little awkward, but that's not to say that it's impossible to do, it's just I'm not sure if that's been done before. I mean it doesn't seem to be that there's any problems with the developer entering into this particular type of agreement, or making it a bilateral agreement, or making it a unilateral agreement where Parks just reviews it, enforces it, but doesn't actually sign off on it and that we sign off as to form and legality.

So, I mean, you have a variety of options. I don't know if you want a recommendation, or I mean, you know, you can do it whichever way you think is the easiest to enforce and the easiest to, to write into the law.

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

COUNCILMEMBER ANDERSON: Are you punting to me, Chair?

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CHAIR MOLINA: No, I know you had mentioned, just consideration. It would sound like from Corporation Counsel we have several options to consider. I think, we, at trying to reach the...

COUNCILMEMBER ANDERSON: He didn't like any of my options, "shall execute an agreement with the Department of Parks and Recreation to set terms and conditions for non-profit play and for use of the golf course by the Junior Golf Program as delineated in items A through D."

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: "The agreement shall be executed prior to second and final reading."

CHAIR MOLINA: Okay, Members...

COUNCILMEMBER ANDERSON: That's not good?

CHAIR MOLINA: Well, I guess if the Members have no objections we can go with that option. It would seem like the Chair, Corporation Counsel and Staff had told us that we have the option to go with using that method or another method. Member Johnson?

COUNCILMEMBER JOHNSON: Yeah, and I think if I'm understanding what Staff and Corporation Counsel are saying is that we know the unilateral agreement is going to be recorded prior to second and final reading, but if the Parks Department has to come up with a separate document, and frame it, and stipulate, and put terms and conditions in there, I don't know if they, that will be ready by second and final reading; is that correct? Am I understanding it...

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: I, I said earlier I thought the idea behind this condition was that you might not know all of the terms or you might not know exactly what the terms for non-profit play was. That it was to give that discretion to the Parks Department and the developer later on, and I think Member Anderson said that, that, that that brought up some concerns and that she preferred to do it through a condition of zoning. And, and to me, I mean that, that does seem like an easier way to do it. If you know the terms of, of play you want to specify you could have that as a condition of zoning. What the separate agreement with Parks may do is, is have sort of more of a, you wouldn't be micromanaging as much maybe, so to speak, that that the Parks Department could manage that and enforce that agreement through, through either a unilateral agreement or a bilateral agreement with them rather than them enforcing a condition of zoning.

But the reason that the timing would typically, why you would typically have that after, and prior to certificate of occupancy rather than prior to second and final reading I believe is that if you knew all of the terms that you wanted to specify in the condition that you would just state that in the condition. That you wouldn't need to wait until later on. I mean, I, I think the ultimate

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resolution is at the pleasure of the Committee but, you know, those, those are basically my comments at this point.

COUNCILMEMBER JOHNSON: Yeah, I, I, I don't have a problem, Mr. Chair, with the condition as such. It would just be is it physically possible for that to be executed and, and, you know, with all due respect to Corporation Counsel and the Parks Department as well as the developer, if they come up with that agreement, and it's available prior to second and final reading fine. I, I have no problem with that. But I, you know, I'll defer to Member Anderson.

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

COUNCILMEMBER ANDERSON: Members, the agreement is already written. It's this unilateral agreement. Everything in this agreement is already taken care of. And if you look at item 7, you know, it says, therefore, the developer makes the following declaration, that they're going to do all these things in, pursuant to the conditions imposed are reasonable and rationally relate, you know, pursuant to the conditions set forth in Exhibit 2. And Exhibit 2 is the declaration that we've already incorporated into this current condition that we're doing.

So, you know, it's just a matter of, you know, changing this from a unilateral agreement to an agreement between the Parks Department and the developer. And, you know, that, that last paragraph on page three, we want to take out that condition that, or that language that was in there by mistake saying that it is expressly understood and agreed that until released in writing by the Department of Parks, we want that out. We don't want them to have the power to release any of these conditions. The Department, blah, blah, blah, you know, herein above shall bind and constitute notice to all subsequent lessees, assignees, and any other persons who claim an interest in said land, and the Department of Parks and Recreation shall have the right to enforce this declaration by appropriate action at law or suit in equity, et cetera.

I mean by making all of this Exhibit 2, the declarations part of our conditions it will be in our unilateral agreement, we have the right to enforce these conditions as a Council. So I don't even know why we have to have this Parks agreement, but if it, you know, is helpful to have a separate agreement with the Parks Department, you know, the reason I don't like the way the agree..., the condition read is it made it sound like, you know, we have an unsigned agreement here. An unsigned agreement is just a piece of paper that could be, you know, shredded tomorrow. So, you know, if they didn't want to sign off on this until the, the CO or prior to the opening of the opening of the golf course that makes me very uneasy, Mr. Chair. Call me suspicious if you want, but that means this agreement could change between now and the time the golf course opens. That's why we want to tie it, because we spent a lot of time crafting these conditions A through D, terms of play. And so we want to make it certain that these are the terms and conditions of which non-profit and Junior Golf Program will happen by making it part of our conditions, and it's already part of this agreement.

So I don't see what the big deal is. You know, they got this done for us overnight, and I think that they could easily reword it to take out the release in writing by the Department and leave the

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rest in. You know, and I don't know why you have to have Exhibit 2. Just put all those declarations right in here. You know, the conditions imposed are reasonable and rational, and they are as follows: A, B, C, D, and you're done. You can have the Parks Department sign it. And I don't know why they wouldn't sign it because these are conditions that this Council is imposing. I, I just think we're making, making things harder than they need to be.

CHAIR MOLINA: Yeah. Thank you, Member Anderson. Deputy Director followed by Corporation Counsel.

MS. SUYAMA: I think I understand what Councilwoman Anderson's concerns may be and maybe I could propose something I think that would be very clear of what the intent of the Council is. And what I would propose is that, that as represented "Honua`ula Partners, LLC, its successors and permitted assigns, shall execute a unilateral agreement before second and final reading as defined in A through B [sic] D, as identified below. An agreement shall be executed with the Department of Parks and Recreation prior to opening of the golf course to further define the terms and conditions of non-profit play and, non-profit play and play for use of the golf course by the Junior Golf Program in accordance with this condition."

So in other words if there needs to be further definition of what those terms and conditions should be by the Parks Department that they would execute that agreement with the Parks Department, but it would be in accordance to the condition that was set by the Council through, through A through D.

CHAIR MOLINA: Okay. Sounds, also sounds like a good proposal. We got several, several of them. I don't what to choose, but let's, let's hear from Corporation Counsel.

MR. HOPPER: Just real quickly. I, I wasn't trying to suggest that a unilateral agreement wouldn't be appropriate, I was just saying that don't say it's a unilateral agreement with the Department of Parks and Recreation. Say it's in favor of them. A unilateral agreement is typically how this would go, because it would be an agreement that's enforceable by the County, but the County's not agreeing to do anything. So a bilateral agreement both parties agree to abide by certain covenants. Here it would just be one party agreeing, and it, it, it should be a unilateral agreement frankly, it's just that if you're going to call it a unilateral agreement don't say it's with the Department. Just say it's in favor of or, you know, as approved by, or, or something in that manner. That, that was my only comment.

CHAIR MOLINA: Thank you, Mr. Hopper. You know what, Members, we've gotten so many different considerations here. We need to take a break, and I want Staff to confer with the Planning Director, Corporation Counsel, Member Anderson and see what we can come up with. There's so many different choices I think we need to settle on one. Let's take a recess until 2:30. . . .(gavel). . .

**RECESS: 2:21 p.m.**

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**RECONVENE: 2:33 p.m.**

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee Meeting for October 18th, 2007, is now back in session. Members, we are on Condition 12, and we've had some considerations related to amending it, and adding language, deleting language. So we'll try and get through the quagmire here. I'd like to recognize Staff to read the, I guess proposal, the latest proposal.

MS. NAKATA: Yes, Mr. Chair. The proposal would be to amend Condition 12, to delete the wording that's currently, currently there in the Member's November 1st correspondence, and replace it with: That as represented by Honua`ula Partners...(change tape, Side 3B)...golf course shall be subject to the following conditions: and then list A through D below.

CHAIR MOLINA: Okay, and that would be it; right? Okay. All right. That is the latest proposal for you to consider. I, I, I guess it's an attempt to simplify it. In, in the Chair's opinion whatever works to avoid confusion. Member Anderson, any comments?

COUNCILMEMBER ANDERSON: So moved.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: All right. It's been moved by Member Anderson and seconded by Member Johnson to amend Condition 12 as read by the Analyst. So, Member Anderson, discussion?

COUNCILMEMBER ANDERSON: Yeah, I think that again, you know, we get so far one day, and then we don't conclude, and then weeks later we come up with another idea, and we're trying to meld these things. You know, it just makes it all so confusing. The reason that there was a need for . . . or an agreement with the Parks Department is because the conditions at that time had not been crafted. Since then we've already crafted all these conditions, and the Council wants these to be conditions on the zoning so that if there's any change of these conditions they have to come back to the Council not to the Parks Department. So I don't see now that there's any need for an agreement with the Parks Department, because the conditions are crafted. They do specify the terms and conditions that we wanted for the Junior Golf Program and for non-profit play. So it seems like we're done.

CHAIR MOLINA: Okay. So just to get clarity on the proposal. This would force, if there's any changes to the conditions or the play regarding the golf course, the Applicant will have to come back to us and basically not deal with the Parks Department. So the Council would have a say if there's any proposals for changing the current conditions at a future date. Okay. Just so we're clear on it.

COUNCILMEMBER ANDERSON: Including, including, Mr. Chair, if they're not giving them 50 percent of the average market, right, rate then, you know --

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COUNCILMEMBER JOHNSON: Accountability.

COUNCILMEMBER ANDERSON: --there's accountability there and the accountability lies with the Council.

CHAIR MOLINA: Okay. Thank you, Member Anderson. All right. The Chair will call for the vote. All those in favor of Condition 12 as amended signify by saying aye?

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay. Thank you. The Chair will mark it 6-0, three excusals Members Medeiros, Hokama, and Victorino.

**VOTE:       AYES:       Councilmembers Anderson, Baisa, Johnson, Mateo, Vice-Chair Pontanilla, and Chair Molina.**

**NOES:       None.**

**EXC.:       Councilmembers Hokama, Medeiros, and Victorino.**

**ABSENT:    None.**

**ABSTAIN:   None.**

**MOTION CARRIED**

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

CHAIR MOLINA: Okay. Members, I've been informed that we'll probably lose quorum between 3:30 and four o'clock today, so we're, we're looking at a little shorter day. So my apologies to you. We, the Chair would like to address one condition for today. It's a big one, Condition No. 13, which relates to the cultural plan. And Condition 13 can be found on page eight of your matrix, and it's also on page five of the November 1st document but, on the, on the November 1st document it makes references to see the Matrix. This matter was discussed on August 1st, August 8th, and August 10th. No consensus was reached.

And the Chair will read the condition for the record. This is from the Maui Planning Commission. Condition 13, "that a permanent cultural plan developed with the approval of the Maui County Cultural Resources Commission shall be developed relating to access to cultural sites within Kihei-Makena Project District 9 (Wailea 670)." So obviously we would have to change the name of Wailea 670 as well in that condition first proposed by the Maui Planning Commission. Members, you will note I believe on Thursday, we received some additional

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documentation from the Applicant regarding, from Mr. Sinoto who is the project archeologist as well. That's been added to the binder, and also a cultural resources preservation plan. Both of these documents, well, the documents from Mr. Sinoto is dated October 30th, and the document regarding the cultural resources plan is dated October 31st. So just for your information and perusal. All right. The Chair is open for additional comments on Condition 13. We'll start with Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chairman. Condition 13 is on what page?

CHAIR MOLINA: Page eight of your matrix.

COUNCILMEMBER ANDERSON: Oh, eight. You know, I'm going to pass out to the Members a few things here. The first thing I want to pass out is a copy of our application for Change in Zoning if I could.

CHAIR MOLINA: All right. We'll have Staff assist you.

COUNCILMEMBER ANDERSON: You know, before we go any further if I could ask the Applicant or maybe Staff, you know, aside from State Historic's requirement for a preservation plan, preservation mitigation plan there's also a requirement for a cultural study. And I know at one time Mr. Jencks, or maybe it was Kimokeo was waiving around a cultural study that they did which is part and parcel of State Historic Preservations 6E review, but I've never seen it. And so I'm wondering if they submitted one copy to Staff that, that never got passed out to us, because often they'll, if there's a large document they'll just say we got it, if you want to see it come see us but, you know, that could have gotten lost in all this, and I never saw it. So I was wondering...

CHAIR MOLINA: Let's, let's ask the Applicant. Mr. Jencks?

MR. JENCKS: Mr. Chair, with regard, I think what you're referring to is the cultural resource inventory. Is that what it's called?

COUNCILMEMBER ANDERSON: No.

MR. JENCKS: What is it? Cultural assessment?

COUNCILMEMBER ANDERSON: Yes, it's where you have to interview...

MR. JENCKS: Yeah. Okay. There, there, I, I know exactly what you're talking about. There's a trigger for a cultural assessment that requires them to, and the requirements for that are set out in Chapter 6E of Hawaii Revised Statutes.

COUNCILMEMBER ANDERSON: Right.

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MR. JENCKS: And the trigger for that cultural assessment is nowadays if you're doing an EIS or an EA, you have to do a cultural assessment. There was no trigger for this project, however, the project team did have Hana Pono do a cultural assessment, because we felt it was important enough to understand more the history of the property, who lived there, who didn't live there, what it was used for, et cetera. So that cultural assessment was done per the 6E guidelines and a copy of that assessment was delivered to the Department of Planning I think last maybe, well, we did, we did a transmittal of documents I think early this year to the Department of Planning. We did it --

COUNCILMEMBER ANDERSON: Why not, why not to...

MR. JENCKS: --because we thought it was a good idea...

COUNCILMEMBER ANDERSON: But why didn't you give it to this Committee, Mr. Jencks?

MR. JENCKS: Well, we, we transmitted it to the Department of Planning and my assumption, maybe that might be incorrect, is that you would see it eventually anyway.

COUNCILMEMBER ANDERSON: No. I mean, once, once an application gets to this body all transmittals come through the Council Services office. And so we, in order for us to see it, it has to come through the Land Use Committee. And I think it's important that we see that, Mr. Chairman, and also to see whether or not it's received any review from State Historic or from OHA.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: Mr. Chair, if I may. The cultural assessment was not a required document for this project once again, and it would be, this document would be used as a part of our cultural preservation plan. It has not; it was done for the purposes of making sure we understood the issues on the property. It was not required by law. We elected to do it; however, to make sure we understood all the issues on the property.

COUNCILMEMBER ANDERSON: Well, I, I appreciate your comments, Mr. Jencks, but I do think it is required by law, because there are significant sites. The whole area is significant in that it represents a cultural landscape. And OHA also thinks it's important. And in their letter to us, Members, I hope you still have copies of that letter that's what they're asking for. OHA needs to be consulted on the cultural review process. At any rate, if we could get a copy of that, Mr. Chairman, I think that would be very important.

CHAIR MOLINA: All right. Member Anderson, we'll check, I'll check with Staff and also the Planning Department.

COUNCILMEMBER ANDERSON: Ms. Suyama, do you recall getting a copy of that?

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MS. SUYAMA: I believe we did get a copy for the Department's file. And as you stated, normally when we receive things after the transmittal up to Council it is for our record, and we don't normally send it up to Council, because we also assume that the Applicant by giving us this additional information is also making sure that copies are filed with the Council.

COUNCILMEMBER ANDERSON: Yeah, I appreciate that, Ms. Suyama, but, you know, we can't assume anything because most assumptions don't pan out especially in this situation. So, Members, I passed out a copy of our Change in Zoning application requirements, because I want to draw your attention to item nine on page two, under D, Content of Application. All applications shall provide the following information. It does not say may. It says shall, preliminary archaeological and historical data and comments from DLNR and Office of Hawaiian Affairs of the State, and if applicable, a preservation/mitigation plan which has been reviewed and approved by DLNR and the Office of Hawaiian Affairs. DLNR is the oversight agency of the State Historic Preservation Division. That means SHPD and OHA needs to review the preservation/mitigation plan.

Now, here's my problem, Members, and I tried to make this very obvious last time we discussed this, and I'm sorry that I have to do this piecemeal because many of the points and the documentation that I've passed out were done in August, were done in September, here we are in November. So I'm just going to do the best I can in bringing you documentation to support my position.

What I'm passing out to you, and as she's passing this out I'm going to again reiterate the State Historic Preservation Program, Mr. Chairman, requires that, number one, you do an inventory survey. That inventory survey gets approved by State Historic before you go on to the next step, the next step being significance determination. In other words, you do your inventory survey, you attach significance to the sites that have been surveyed, and if State Historic says, okay, your surveys adequate go to the next step, then you make a determination. Of these sites we've inventoried these sites are significant enough for preservation. These other sites aren't that significant, so we don't need to preserve them. We can do some data recovery and destroy them.

That's a two-step process, and you can't go to the second step until the first step has been approved. Then you do your preservation/mitigation plan. And at each step of the way, Mr. Chairman, the public has a right to review each step. Within the State Historic Preservation law they have to post the inventory surveys online. Once State Historic Preservation has accepted the survey as complete they will then post it on their site. And I, I, I'm sorry I don't remember how many days, it's a minimum of 30, it could be 45 days that the public has the opportunity to then review this survey, because there might be somebody out there who is a descendent of this ahupua`a and doesn't live here now, but is interested and could say, wait a minute, there's significance to that site, because my tutu told me that, you know, this isn't just, this is not a ranch rock wall, this is an ahupua`a wall, and this has been here since time immemorial.

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So that's why they're, they're posted online so that the general public has an opportunity to weigh in. And after that period is done, then State Historic decides whether or not your survey is final and complete enough to make a significance determination on the sites. Then they do that and there's various criteria, I also passed that out, Members, what the criteria, and if you have the OHA letter they have also listed the criteria there. And, you know, they're specifically concerned about criteria E pertaining to additional significance of an evaluated cultural site as having an important value to the Native Hawaiian people, and the duty to consult with the Office of Hawaiian Affairs regarding these significant assessments appears to have been wholly lacking in the Wailea 670 project's historic preservation review process. And that's because, Mr. Chair, they haven't even got passed the survey. They do not have an accepted survey from State Historic in order to get the significant evaluations that would then be reviewed by State Historic as well as OHA to then get to the preservation/mitigation plan that we could then send out to OHA and to State Historic and get their approval. We don't have that, Chairman, and that's called out for in our application requirements. And the reason that's important is because that gives us, as the decision makers and the stewards, to be able to say, well wait a minute, developer, there are significant sites here, and your preservation/mitigation plan calls out for a buffer zone. Or it might even be significant enough that we want to have a conservation easement around this whole site. But if we don't have that information in front of us now, Mr. Chairman, we are abdicating our opportunity to put those conditions in place. And I would also carry it even farther to say that we're abdicating our responsibility.

So, Members, the letters that I sent, that I passed out to you these are State Historic Preservation review letters. Each step of the way as the consultant to the developer does their review, their survey, it goes to State Historic, State Historic reviews it, sends them back comments. Now mind you, this is the third letter asking for more information. And I'm only giving you this one to short cut the piles of information that we've been receiving. But you can see that they're still asking for more information, and I'm just going to cut to the chase. As we indicated in our review of Draft 2, minimal testing is suggested to support or refute your hypothesis. They have not presented any testing. Prior to concurring that data recovery is necessary we still recommend testing. This will better allow evaluation of the multiple possible functions hypothesized. In addition, this will provide a basis for recommendations of data recovery. We await the revisions to Draft 2.

Now, this was January '02, and they have not proceeded with any of the regulatory review of this project under State Historic Preservation laws, H.R.S. 6E. They want us to pass this out without the preservation/mitigation plan being done. In other words, causing us to forego our option to review that preservation/mitigation plan, and our ability and responsibility to put conditions in place to make sure the preservation/mitigation plan, number one, is adequate, adequately implemented and carried out. And, and actually foregoing our opportunity to say, you know what, we don't think this preservation/mitigation plan is adequate enough because we have a review letter from OHA saying it isn't.

So we're not only abdicating our responsibility by not having the preservation/mitigation plan in hand, but we are disallowing the State Office of Hawaiian Affairs their opportunity and legal

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right to review the preservation/mitigation plan. And they are asking us in this letter to please allow them that opportunity, Mr. Chairman. That's all they're asking for in this letter is that we give them their legal right. And again, it's in our County Code Change in Zoning application, so I don't know how we can ignore it. I don't know how the developer expects us to ignore it, and whatever draft preservation plan they have it hasn't been reviewed by State Historic, it hasn't been reviewed, not only reviewed but approved, legally for that plan to have any merit in any standing it must be reviewed and approved by State Historic as well as the Office of Hawaiian Affairs. That hasn't happened. They're two steps away from even getting to the preservation plan, because they haven't finished their inventory survey.

So that's why I made my condition, Mr. Chairman, the other day to set aside this area as a conservation easement, because then at least we're assured that there will be no bulldozers going in there and bulldozing this site where all these valuable historic sites lie and are really an indicator of the ahupua`a system. There's a stepping, an ancient stepping stone trail there, Mr. Chairman, one of the last remnants of any such trail in Maui County. And, you know, we don't have, we don't have a final review and for us to just pass this through and say, oh, well, somebody else will take care of it, is an abdication of our responsibility, and is also a slap in the face to OHA and State Historic, because they're the regulatory agencies who have the right to review this preservation/mitigation plan. They have the right to review and approve the survey, which hasn't been completed.

And I would mention one more time that back in August when I brought this up, or it could have been May, Mr. Aki Sinoto was here, and he promised me over and over again, oh, yeah, I'm almost there. I'll get it, I'll get it approved, and I'll have it in, you know, next time we meet. And I have the minutes in here if you want me to pull them up. We have not received anything, any, any legally substantiated document. If we don't have, look at this document, Members, it's logged, it has a log number, it has a document number, it has all this reference to their, their status in the, in the historic preservation review, Chapter 6E-42, archaeological inventory, survey, addendum survey, supplemental inventory to the northern and southern portions. This is the third or fourth review of their inventory survey, Mr. Chairman, and they're still asking for them to finalize, and do testing, and give them the revision to Draft 2, and nothing has been forthcoming since that time.

So, you know, I would just have to say that the developer and his consultant has, you know, no, no intention of giving us a finalized review until after we've passed this out, and we've lost our opportunity on behalf of the public to make sure that it's done correctly.

**CHAIR MOLINA:** Thank you, Member Anderson. Committee Members, any questions, which relate to Condition No. 13, Cultural Plan? Member Johnson?

**COUNCILMEMBER JOHNSON:** Yes, Mr. Chair, I think that, you know, obviously we'd, we'd like to move forward with some of these things but, you know, given the explanation and given the charge that we have if the developer wants us to move forward a complete application then we have to do it based on whether or not we have all of those conditions. And they're stated very

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clearly what has to be completed and what has to be done. I think that Member Anderson's condition, once again, we're doing things that may seem unorthodox in comparison to the way things have been done before, but because we're getting an application that does not have all of the requirements in it that's why I say if we're looking at that particular area, if we're looking at the preservation of the acreage, because we don't have all of the information and the comments from OHA, the only way that we can protect those rights is to actually set aside the area so that at some point in time this basically can move forward. The way to preserve a site is just so you're not destroying it.

So, for me, I have no problem then. If the Applicant is insisting that we move this on, and we don't waste time, and he wants an answer, well, okay, our answer then is that in the absence of these signed documents from the agencies which are required based on all of the things that we show in our application requirements, in the absence of that we have no choice but to set aside this area.

The, the other point that, and, and while this may seem unrelated to me, it is related. One of the requirements under 19.45, and this is on page 609 of the County Code, the application says, the application shall include the following: one, proof of ownership and if appropriate proof of authorization by owner. If you remember back when we took public testimony back in Kihei, there were a number of Hawaiian families that came forward and asserted their rights to certain portions of this particular land. There is, and I believe, and, and I'll just tell you I found in binder four, it's a September 27th, 2006 communication. And it's part of a title report that, and I'll just give you the acreage that is specifically excluded because there's not a clear title. And there's 25.986, 21.052, 11.166, 9.367, 11.896, and 16.624 acres. Those are areas that from the Title Guaranty Company did not, I guess, have a clear ownership.

So when you add all that up it's roughly 96 acres. They may be spread out throughout the project, but my feeling is that if you have to exclude roughly 96 acres because there is no clear proof of ownership, then my thought would be that is an acreage that is similar to the southern portion of this property. It may be that these are all spread out, but at least if the individual or Hawaiian ancestors that come forward, and they may at some point in time, file their rightful claim for these areas, why not just set aside an area that is culturally significant that we know, because that's where most of these sites exist, and then preserve some type of right for the individuals who have a claim on that property? I know we did this, Chair, in the case of Pioneer Mill where we did set aside a portion where we were clear that there was one little portion that did not have, I guess there was a cloud on the title. That was the way it was explained to us. This is where I believe we, we have an opportunity, and this is if the Applicant, who hasn't provided this, this information, insists that we do this. I say while it may not meet the specific definition of preserving all of these acreages or these individual parcels spread out throughout the property, at least I would feel better about knowing that there's 96 plus acres that is going to be preserved in perpetuity which would not be able to be built on anyway, because the Applicant doesn't have proof of ownership. He can't get clear title.

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So that's why, Mr. Chair, if, if we're going to push this forward that would be my philosophy is just preserve the whole site. That way there is no argument about any potential damage being done, there's no argument about the heirs and assigns coming forward at a future time. Although they may argue about the specific site at least there would be something that would be worthy of preservation that they would then have, I guess, some cultural tie to. So that's my philosophy, Mr. Chair, but as you see we have bare quorum or bare minimum here, so I mean this is very important. I'd really prefer to just, at, at this point defer on this one but if, if they want to move forward without having all that information this is, I feel on Member Anderson's part, her compromise of preserving the area, and then waiting for all of those other studies, and the kupuna to come in and get access to the area and find out what actually is there, plus the testing that needs to be done. I think that I would feel much better about it, because I would know that I was not responsible for allowing areas to be disturbed. So that's just my take on it, Mr. Chair. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Now, the Chair does realize we're going to be running short of Members soon, and I don't believe we could get to a decision on this today. However, we do have the Applicant, and as I mentioned earlier, we did receive a letter from Mr. Sinoto regarding the cultural resource management as well as a...*(change tape, side 4A)*...cultural preservation plan. I'd like to...

COUNCILMEMBER ANDERSON: Are, are any of the letters from State Historic?

CHAIR MOLINA: Nothing yet, but I'd like to ask Mr. Jencks to elaborate further why, you know, at this point with some of your concerns that you brought up that needs to be addressed.

COUNCILMEMBER ANDERSON: What binder did, did you have?

CHAIR MOLINA: Well, I, I just received this so it would probably be in your binder number eight. It's dated, one letter's dated October 29th, and the other letter is dated October 30th. Both from Mr. Sinoto, excuse me, I'm sorry. One from Mr. Sinoto, and forgive me as I go through this maze of documents.

COUNCILMEMBER ANDERSON: You know, Mr. Chairman, if I might? You know, we've already gotten this same baloney before. He's trying to tell us that these two letters that from State Historic, the one dated August '06 and the other one isn't even dated, it's, it's only for the water system, the upper level water system. The State Historic Preservation review was finalized for that. That is not the same as this whole project area. And, you know, I'm not even going to read what Mr. Aki Sinoto says here, because it means nothing. He can say whatever he wants to say. Unless we have a letter from State Historic Preservation, these are the agency experts that do the review. These are the people that we have to depend on, Mr. Chairman, to get us accurate information.

And, you know, I would like to just state I pulled out the minutes. It was July of '06, when I asked Mr. Aki Sinoto when we would have a final mitigation/preservation plan. That should be

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done in how many months? And Mr. Sinoto says: "Well, actually the implementation of the work that will be discussed in the plan should be done within four to five months." I said: "You mean implementing the plan?" Mr. Sinoto: "Yes." Me: "But before you implement the plan you have to have it approved by State Historic." Mr. Sinoto: "Right, yeah." Anderson: "So when are you going to do that?" Mr. Sinoto: "Well, we, we plan to get that in fairly soon so they can give us the approval, and then we'll proceed with the fieldwork." This was July of '06, Mr. Chairman, and we have nothing from State Historic dated past July '02.

So, you know, you can schmooze us all you want with all kinds of technical language, and promises, and recommendations that we're going to do this, that and the other, but until you follow State Historic Preservation regulations and their request you're outside the, the system. You're operating outside the system in an attempt to convince us that you are. And I'm sorry, this is too important, Mr. Chairman. These sites are highly significant. Do I need to remind you again what it said in the community plan about the sites in the southern most portion of the Makena, Kihei-Makena area? This should have all been done before the application was even processed. It says so in our community plan. And here we are a year and a half later, after Mr. Sinoto promised us at this meeting that he was going to get it done fairly soon and give us the approval, and State Historic still has not received their second draft.

Unless Mr. Jencks can give us anything from State Historic I'm not interested in wasting this Committee's time with the same old blah, blah, blah. I mean here is their survey. Here is the letter reviewing the survey, asking them to do more work before they can approve the survey. We're stuck at the survey, Mr. Chairman, and, you know, I'm going to pass down what the review is once again. I already did this once, but here we go one more time so Members can see exactly what the review process is. This comes right off State Historic's site. You do an inventory survey. If there's sites present from, in the inventory survey that has to be approved. If there's sites present you have to determine the significance. If there are significant sites and that has to be approved. Then you agree on the treatment. We still don't have the inventory survey approved by State Historic nor has OHA seen it. And they are a party to all of this review.

CHAIR MOLINA: Okay. Member Anderson, I'd like to give Mr. Jencks a chance to explain why some of this information hasn't gotten to us yet. If you can give us an update from the, I know Mr. Sinoto is unavailable, if you could comment on his response?

MR. JENCKS: I'd be happy to, Mr. Chair. In an effort to inform the Committee as to what has transpired between January of 2002 and the present day, I asked Mr. Sinoto to summarize the conversations, the contact, the site visits, and that was all summarized in the letter that I've given you. I, I urge you, I urge you to read it. It's dated October 30th. If you don't have it I brought in 16 additional copies for you, for you to review, and read, and find out exactly what's been going on between the project team and SHPD.

If I may, Mr. Chair, I, I do have one question of Ms. Johnson which, which refers back to the issue of land control. And if Ms. Johnson has any specific information on, on land title, specific

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references to issues on the property I'd like to see those so I could have Title Guaranty run them down. I'd also like to ask Ms. Johnson a question. Are you saying that we, do you have evidence that we do not have title insurance on this property?

COUNCILMEMBER JOHNSON: If you look in the exclusion section, and I reference the September 27th, 2006 documents that you presented to us, which was from your title company, there are acreages which are specifically excluded and that is on the transmittal on that date.

MS. NAKATA: Excuse me.

MR. JENCKS: If you could provide those to me.

COUNCILMEMBER JOHNSON: I'll be happy to give you a copy.

MR. JENCKS: I'd, I'd be happy to do...

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Staff?

MS. NAKATA: Staff believes that those acreages may correspond to the lots that were excluded from one of the Change in Zoning bills and included as zoning lots in the other so that taken together once the bill was consolidated I believe those gaps, specifically the acreages called out or covered by those, in one bill again exclusion lots and the other zoning lots. So there were some alphabetical references along with those acreages. So I believe those acreages called out were gaps filled in by the other Change in Zoning bill.

CHAIR MOLINA: Members, the Chair would like to proceed in the following fashion. I want to give you guys a few minutes to review Mr. Sinoto's letter, and then we can get back to some Q and A with the Applicant, because I know it's a rather lengthy detailed letter. I'd like to give you guys a chance to review it. I know with so much other documentation we have to consider not only with this application but other matters, there are times where we can't get to every single document. So we'll call a recess for ten minutes. Meeting in recess. . . .(gavel). . .

**RECESS: 3:12 p.m.**

**RECONVENE: 3:38 p.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting for October 18th, 2007, is now back in session. Thank you for that extended break, Members, for the Chair and Staff to confer on matters related to Condition 13, which we left off on. I trust you've had an adequate amount of time to read the letter from Mr. Sinoto explaining his point of view on this particular matter.

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It's been brought to my attention by Staff that on Condition No. 12 which we recently voted on what we had done was vote on the amend, proposed amendments to Condition 12, and we did not go back to the main motion as amended on Condition 12. So for procedure sake I was advised by Staff that we need to go back to Condition 12 before getting on with Condition 13. So at this point the Chair will entertain a motion to approve, Staff?

COUNCILMEMBER VICTORINO: We have motion. We have a motion on the floor.

CHAIR MOLINA: Yeah, okay. All right. Excuse me. All right. What we'll do we'll go ahead since we already have a motion on the floor we will just take the vote then. Are we all clear --

COUNCILMEMBER ANDERSON: Could we, could we --

COUNCILMEMBER JOHNSON: No.

COUNCILMEMBER ANDERSON: --no, we're not, Chair.

CHAIR MOLINA: -- on the main motion as amended.

COUNCILMEMBER JOHNSON: Restate the motion --

COUNCILMEMBER ANDERSON: Restate the motion please.

CHAIR MOLINA: Okay. Staff.

COUNCILMEMBER JOHNSON: -- because we don't know what the main motion is.

CHAIR MOLINA: Staff, go ahead and restate the main motion as amended for Condition No. 12.

MS. NAKATA: If Staff could summarize I believe the main motion was to incorporate at the end of then existing Condition No. 12, a recital to A through D the conditions stated in Exhibit 2 to the Member's revised unilateral agreement. Subsequent to that we had a number of amendments that were carried to that main motion, the last of which was, the last of which was to substitute the language in existing Condition 12 with that sentence that says, that as represented by Honua`ula Partners, LLC, the golf course shall be subject to the following conditions, and then listing A through D, removing all reference to the unilateral agreement. What the Chair is referencing is that following the vote on that amendment we did not go back to the main motion as amended for the vote.

COUNCILMEMBER JOHNSON: Okay.

COUNCILMEMBER ANDERSON: And what was the main motion?

CHAIR MOLINA: Staff?



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CHAIR MOLINA: Okay. Members, now we're back on Condition 13. The Chair is going to throw this out for your consideration today. I know you've taken some time to read the letter from Mr. Sinoto, however, the Chair would prefer to have Mr. Sinoto or some documentation whether it be from SHPD, Mr. Sinoto, or whomever here to continue the discussion, and it's quite obvious we won't be able to get that information here today. So the Chair's preference would be to address this at our next recessed meeting. The Chair is looking at Wednesday, 9:00 a.m. I would ask the Members for their comments on this consideration from the Chair. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, and, and with all due respect to Mr. Sinoto having a verbal conversation is not the same as having a documented letter from OHA, and DLNR, or SHPD. I believe that that's required. So I would ask that we try to at least get in contact with them to get the most recent update, because this going back and forth with a middle man it just is very frustrating for I think all of us, because it's sort of a he said-she said, and that's not the way we should be doing this. We should be getting something that's actually documented so we have it in the files that SHPD signed off on it, that they've approved, that they've reviewed whatever it is, and that the information has been provided to their satisfaction is going to garner their support, because that's basically what we're charged with is checking that off as one of the items that is pending on this application. So that would be my preference, Mr. Chair. I, I mean I have nothing against Mr. Sinoto, but, you know, it's not Mr. Sinoto that is in charge, and these other agencies are, and they've asked for the documentation. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. And I guess it is well documenting the problems SHPD is having with keeping up with their work, they have people resigning, and it just pushes back a lot of requests for information not only with this application but other applications throughout the State as well. So we will see what can be done as far as trying to extract whatever information we can get. In looking at the letter I believe there's Mr. Rodrigues, Rodrigues from the, who is the Maui cultural specialist and there's also Ms. Pickett who is the staff archaeologist. These are the people, at least here locally, with the SHPD, and we'll see what can be done to get one or both of them here as well as Mr. Sinoto to address some of your questions, which relate to Condition No. 13. So with that being said, Members, that is the Chair's recommendation.

COUNCILMEMBER ANDERSON: Chairman?

CHAIR MOLINA: Member Anderson?

COUNCILMEMBER ANDERSON: And, you know, if we could get a letter form SHPD. This letter that we received from Mr. Sinoto attached to Mr. Jencks letter is dated October 29th, and his second to the last sentence in his letter says, our current understanding is that a letter is forthcoming shortly from SHPD reiterating completion of the inventory survey. So, I would think that they had a meeting October 17th where this subject was discussed, so I don't know

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how shortly, shortly is, but it's, like, two weeks since then. So I would hope that they could give us something from SHPD verifying this.

CHAIR MOLINA: Okay. So noted, Member Anderson. I'm sure the Applicant will take your request into consideration. So, Members, any other final comments before we recess? Okay. Again the Chair is looking at 9:00 a.m., this Wednesday, November 7, 2007, and the Chair would hope that we can close this matter out, a decision could be made this week unless all of you have the energy to take this into Thanksgiving and Christmas. I know the Chair is not in favor of that, because we have a lot of other land use issues to consider. So I'm just throwing that out for your consideration. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. As far as Wednesday, I do have an early appointment from nine to ten, but I'll be here at 10:30. My question though, I have one question in regards to any kind of response from OHA regarding that letter that was sent to them back in September.

CHAIR MOLINA: Okay. Let me consult with Staff. Staff, have we, we received any letter from OHA recently? I know Mr. Jencks sent us a letter, I guess, that he had conferred with OHA, but OHA themselves they have not responded? Staff, can you confirm that?

MS. NAKATA: Not that I'm aware of.

CHAIR MOLINA: Okay. Mr. Pontanilla, maybe what I might suggest if you would like to, out of your office as well, to maybe get a response from OHA in relation to Mr. Jencks letter on your own as well if, if, you know, Staff is unable to get a, solicit a response from them. But, you know, it's typical of many of our State agencies they take quite some time to respond.

VICE-CHAIR PONTANILLA: Really.

CHAIR MOLINA: Yeah, and, and it's not put them down. I guess when you have to deal with matters on a statewide basis it does take a while longer to get a response, whereas we with our departments here being that we only deal with Maui County we tend to get responses a little faster so.

VICE-CHAIR PONTANILLA: Okay. I'll shoot a letter from my office regarding that letter was sent, that was sent back in September for some comments.

CHAIR MOLINA: Okay.

VICE-CHAIR PONTANILLA: Thank you.

COUNCILMEMBER MATEO: Chairman?

CHAIR MOLINA: Mr. Mateo.

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COUNCILMEMBER MATEO: Chairman, thank you. The, the break that you're going to be having in a few minutes this is so you can get a count of how many of the Members are actually available on this day?

CHAIR MOLINA: Actually the Chair was looking at recessing already, however, if you would like to, like a short recess to go back and kind of look at your calendar, and then we can come back and...

COUNCILMEMBER MATEO: No, I figured because there's several Members who are not here and unless you've already contacted their offices to check with their...

CHAIR MOLINA: Yeah, we'll have Staff, I believe we did contact one Member about the possibility of the 7th earlier today, and that Member did indicate they could be, be here.

MS. NAKATA: Member Baisa has indicated she's available from nine to 10:30; Member Medeiros had prior plans to attend I believe some kind of a workshop or expo, but said he can cancel if needed for quorum.

CHAIR MOLINA: And did we have a chance to consult with Chairman Hokama?

MS. NAKATA: No, not yet.

CHAIR MOLINA: Okay. All right. So that's where we stand at this point. So I believe we should have at least quorum to open up on Wednesday, nine a.m., and after that it's subject to the Member's availability, and I mean that will determine how far we go, and if we get a decision made with or without a full body. So we'll see. Member Anderson?

COUNCILMEMBER ANDERSON: I'm just wondering if you got a confirmed time from anybody how long they can stay because, you know, an hour and a half isn't a whole lot --

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: --to be even bothered with, Mr. Chair.

CHAIR MOLINA: Yeah. Right. I anticipate Condition 13 will take some time.

COUNCILMEMBER ANDERSON: And since we are down to the wire in dealing with the most controversial conditions I think it's only fair that we have as full a complement as possible here otherwise we might as well not bother.

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: I mean, you know, I know you're trying to get this done in the most expedient way possible, but I would just hope that we would have more than a quorum for

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more than an hour and a half, because a lot of us have to change our plans to make this Wednesday meeting happen.

CHAIR MOLINA: Yeah, the Chair is hopeful as well and keeping his fingers crossed. So we'll just, we'll have to play it by ear and see what happens Wednesday as far as how long Members can stay. Very good, Members. So we will recess this meeting until Wednesday, November 7th, nine a.m., right here in the Chambers.

COUNCILMEMBER MATEO: Chairman?

CHAIR MOLINA: Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, before you adjourn, before you recess are we going to be getting any updated copy of the matrix prior to Wednesday so we can review them for Wednesday?

CHAIR MOLINA: Thank you for bringing that up, Mr. Mateo. Staff and I will be working as hard as we can to get something updated as to, I guess that November 1st document showed everything what was done up until that day, but we took some action on November 1st as well as today, so we will try and get, provide you an updated document to show what has been done with all the conditions.

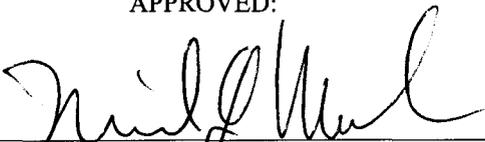
COUNCILMEMBER MATEO: Thank you, Chair.

MS. NAKATA: Could Staff inquire would an update to that November 1st document be sufficient or did it need to be integrated into the matrix?

CHAIR MOLINA: Okay. All right. Thank you very much, Members. So this meeting is in recess until Wednesday, November 7th, 9:00 a.m. . . .(gavel). . .

**RECESS:** 3:50 p.m.

APPROVED:



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MICHAEL J. MOLINA, Chair  
Land Use Committee

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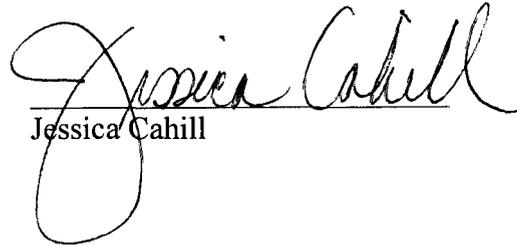
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CERTIFICATE

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

DATED 15th day of November, 2007, in Wailuku, Hawaii

  
Jessica Cahill