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M I N U T E S
LAND USE COMMITTEE
Council of the County of Maui
Council Chamber
November 7, 2007

APPROVED:


Committee Chair

1 **RECONVENE:** 9:06 a.m.

2

3 **PRESENT:** Councilmember Michael J. Molina, Chair
4 Councilmember Joseph Pontanilla, Vice-Chair
5 (Arrive 10:16 a.m.)

6 Councilmember Michelle Anderson, Member
7 (Arrive 9:20 a.m.)

8 Councilmember Gladys C. Baisa, Member
9 (Leave 10:55 a.m.)

10 Councilmember Jo Anne Johnson, Member
11 (Arrive 10:48 a.m.; Leave 2:41 p.m.)

12 Councilmember Danny A. Mateo, Member

13 Councilmember Bill Kauakea Medeiros, Member

14 Councilmember Michael P. Victorino, Member
15 (Leave 12:07 p.m.)

16

17 **EXCUSED:** Councilmember G. Riki Hokama, Member

18

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

21

22 **ADMIN.:** Colleen Suyama, Deputy Director,
23 Department of Planning

24

25

1 Michael J. Hopper, Deputy Corporation
2 Counsel, Department of the
3 Corporation Counsel
4
5 **OTHERS:** Charles Jencks, Owner's Representative,
6 Honua`ula Partners, LLC
7 Steven J. Goodfellow, Goodfellow Bros., Inc.
8 Gwen Ohashi Hiraga, Principal,
9 Munekiyo & Hiraga, Inc.
10 (Applicant's entitlement consultant)
11 John Ford, Program Director/Senior
12 Biologist, SWCA Environmental
13 Consultants
14 (Applicant's flora consultant)
15 Aki Sinoto, Aki Sinoto Consulting
16 (Applicant's archaeologist)
17 B. Martin Luna, Esq.,
18 Carlsmith Ball LLP
19 (Applicant's attorney)
20 Blaine J. Kobayashi, Esq.
21 Carlsmith Ball LLP
22 (Applicant's attorney)
23 Boyd P. Mossman, Board of Trustees -
24 Maui, Office of Hawaiian Affairs
25 (via telephone conference)

- 1 Joyclynn Costa
- 2 Kimokeo Kapahulehua
- 3 Lee Altenberg
- 4 Additional attendees (5)

5

6 **PRESS:** Claudine San Nicolas, *The Maui News*

7 Akaku--Maui County Community Television, Inc.

8

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

10 **PHASE 1 APPROVAL FOR "HONUA`ULA/WAILEA**

11 **670" RESIDENTIAL DEVELOPMENT**
(C.C. No. 01-334)

12 CHAIR MOLINA: (Gavel). The recessed Land Use

13 Committee meeting of October 18th, 2007 is now

14 back in session. Today is Wednesday, November

15 7th, six minutes after the hour of 9:00 a.m.

16 Good morning, Members.

17 COUNCILMEMBER BAISA: Good morning.

18 CHAIR MOLINA: For the record, we have in

19 attendance, we have bare quorum right now, we

20 have Members Mateo, Baisa, Medeiros,

21 Victorino, and Molina. We've been informed

22 that Members Anderson and Johnson are running

23 a little late, and Member Pontanilla will be

24 joining us later this morning.

25 And, Staff, what is the status of

1 Chairman Hokama? Will he be joining us today
2 or at a later point?

3 MS. NAKATA: He'll be available this afternoon.

4 CHAIR MOLINA: This afternoon. Okay, thank you very
5 much, Staff.

6 Members, we -- at our last meeting we
7 were -- we had been discussing Condition 13
8 related to the cultural plan. Member Anderson
9 had brought up some considerations for us to
10 have discussion on. The Applicant has brought
11 his representative, his archeological
12 representative, Mr. Sinoto, to respond to his
13 letter. At this point the Chair would prefer
14 to wait until Member Anderson comes, and then
15 we'll have Mr. Sinoto, and I believe Mr. Ford
16 as well, to respond to any questions related
17 to the cultural plan.

18 In the meantime, Members, we had a
19 letter sent to us from the Mayor, dated
20 November 6th, related to the acreage for the
21 Fire Department and the Police Department.
22 Any questions? Members, do you have that
23 letter? You should have that letter copied.
24 It should be in your binder, if you look,
25 binder 8.

1 COUNCILMEMBER BAISA: Binder 8.
2 MS. FRIAS: Last page.
3 COUNCILMEMBER BAISA: Last page?
4 COUNCILMEMBER MEDEIROS: What's the date?
5 COUNCILMEMBER BAISA: Second to the last page.
6 CHAIR MOLINA: Dated November 6th, 2007. In the
7 meantime, I'd like to call upon Mr. Jencks, if
8 you have a copy of that letter, if you'd like
9 to give any comments to that letter while the
10 Members find the Mayor's letter.
11 MR. JENCKS: Thank you, Mr. Chair. Good morning,
12 everyone.
13 COUNCIL MEMBERS: Good morning.
14 MR. JENCKS: Did get the letter. I got a copy
15 yesterday from Ms. Nakata, dated November 6th,
16 and I think the most important point of this
17 letter is that the Department of Police and
18 the County of Maui are intent on constructing
19 and building a major police facility in South
20 Maui that would serve that area of Maui
21 County. And the Mayor made it clear in the
22 letter that -- well, I think it's clear that
23 the one acre that we had proposed for the
24 Police Department really isn't what they need.
25 They would prefer some kind of cash

1 contribution towards the construction of the
2 new fire [sic] station from the project.

3 The -- I'll read the one, two, three,
4 fourth paragraph. "The current priority for
5 police facilities in the South Maui community
6 is for the development of a full-service
7 police station. The cost for this project
8 will be significant and financial support from
9 the developers of Honua`ula would be welcome."

10 To that end, assuming we were going to
11 provide a one-acre facility for a substation
12 in the VMX District, we would like to suggest
13 that the partnership provide to the County of
14 Maui the sum of approximately half a million
15 dollars, \$12 a square foot times 43,560 square
16 feet, which is the area of an acre. It's
17 about \$550,000 as a cash contribution towards
18 the construction of the station, which would
19 be the value of that land on an unimproved
20 basis, and provide that contribution to the
21 County of Maui at the time that a contractor
22 is let to construct that police station in
23 South Maui. So there's some firm date at
24 which the County would get the money. So that
25 would be some time in the future, but that's a

1 firm date that the County would then get that
2 cash contribution. So that would be our
3 suggestion at this point

4 CHAIR MOLINA: Okay. So, Mr. Jencks, if I could get
5 some clarification, again, for the record, so
6 your cash contribution, we're looking at a
7 half a million dollars towards the new police
8 station or substation and the Fire Department,
9 I think your original offer was -- was it one
10 acre for the Fire Department?

11 MR. JENCKS: It was one acre each, and subsequent
12 discussions with the Department of Fire
13 Control and Public Safety was that they would
14 like two acres in the VMX District, and our
15 proposal to them was to define that acreage as
16 a part of the initial Phase II application,
17 which would be that central area of the
18 project, and subdivide it out and dedicate it
19 to the County upon Phase II approval.

20 CHAIR MOLINA: Okay. So you would be willing to
21 offer more than an acre to the Fire
22 Department?

23 MR. JENCKS: It's two acres.

24 CHAIR MOLINA: Two acres.

25 MR. JENCKS: That was by mutual consent.

1 CHAIR MOLINA: Okay. And this was in discussion,
2 was this with Chief Kaupalolo or Chief Bal?

3 MR. JENCKS: Both.

4 CHAIR MOLINA: Both, okay, thank you.

5 Members, any questions for Mr. Jencks
6 related to this matter? Member Baisa.

7 COUNCILMEMBER BAISA: So to get it perfectly clear,
8 the deal, then, would -- that you're offering
9 would be two acres for the Fire Department and
10 \$550,000 for the Police Department?

11 MR. JENCKS: That's correct.

12 COUNCILMEMBER BAISA: And the Police Department
13 would not receive a land donation?

14 MR. JENCKS: That's correct.

15 COUNCILMEMBER BAISA: The money would be in lieu of?

16 MR. JENCKS: That's correct.

17 COUNCILMEMBER BAISA: Okay.

18 CHAIR MOLINA: Members, any other questions for the
19 Applicant related to this proposal? Okay,
20 seeing none, thank you very much.

21 So, Members, any objections to the
22 Applicant's offer?

23 COUNCIL MEMBERS: No objections.

24 **COUNCIL MEMBERS VOICED NO OBJECTIONS**
25 (Excused: MA, RH, JJ, JP).

1 CHAIR MOLINA: Staff, should we -- I guess that
2 is -- that is listed as one of the conditions,
3 I guess the Applicant's conditions on our
4 matrix?

5 MS. NAKATA: Yes, Mr. Chair, it's on page 17 of the
6 Members' matrix, and it's the Applicant's
7 Proposed Condition Number 33.

8 CHAIR MOLINA: I'm sorry, did you say page 17 of the
9 matrix?

10 MS. NAKATA: Yes, the matrix dated 11/6/07.

11 CHAIR MOLINA: 11/6/07. This is the updated, okay,
12 I'm sorry. I was looking at the matrix --
13 October 22nd matrix. Sorry about that. Okay,
14 Members, if you'll note, page 17, so we will
15 incorporate -- we'll need to make an
16 amendment, then, Staff, for -- or
17 clarification to indicate 550,000 to the
18 Police Department and two acres of land
19 towards the Fire Department. At a later point
20 you can draft -- can we have language drafted
21 to reflect the offer from the Applicant?

22 MS. NAKATA: Yes, Mr. Chair. Also, Staff would note
23 that when this condition was discussed
24 previously, there was also consideration of
25 the two acres for Fire having direct access to

1 the Pi`ilani extension.

2 CHAIR MOLINA: Okay, Members, what are your
3 comments? Is that what you would want
4 incorporated in that as well? Member Baisa.

5 COUNCILMEMBER BAISA: Is that part of our
6 understanding? Is the Applicant aware of that
7 and agreeing to that?

8 CHAIR MOLINA: Okay, Mr. Jencks?

9 MR. JENCKS: Absolutely.

10 COUNCILMEMBER BAISA: Very good. So that takes care
11 of it.

12 CHAIR MOLINA: Members, any objections to
13 incorporating that language into the
14 Applicant's proposal?

15 COUNCIL MEMBERS: No objections.

16 CHAIR MOLINA: Okay.

17 MS. NAKATA: Could Staff please clarify if the sum
18 was 500,000 or 550,000, please?

19 CHAIR MOLINA: Is that 550,000, Mr. Jencks? Okay, I
20 see a nod from Mr. Jencks. Okay,
21 five-five-zero, and three more zeros added to
22 that.

23 All right, Members, we shall move on.

24 COUNCILMEMBER MATEO: Mr. Chair?

25 CHAIR MOLINA: Yes, sir, Mr. Mateo.

1 COUNCILMEMBER MATEO: Thank you, Mr. Chair. Just
2 like to ask the Chair the Chair's intent of
3 how we're going to proceed today? And my
4 question is generated from the fact that the
5 new matrix, it's getting bigger, yeah?

6 CHAIR MOLINA: Yes.

7 COUNCILMEMBER MATEO: And we just got it, so, you
8 know, personally I would like to have some
9 time to recap on where we've been and how long
10 the journey has taken us --

11 CHAIR MOLINA: Okay. Well --

12 COUNCILMEMBER MATEO: -- before we get to the point
13 where the Chair intends to make a
14 recommendation.

15 CHAIR MOLINA: Okay. Members, would you like a
16 little time to review this matrix, look it
17 over, and then come back with some questions?
18 I mean, that's one option. First of all, time
19 procedurally today, the Chair intends to go
20 till 12:00 for a break and then reconvene at
21 1:30, and I believe we will lose quorum at
22 3:00.

23 Staff, can you read for the record who
24 can be here and what time and so forth so we
25 have an understanding who will be here after

1 lunch? Right now we only have bare quorum,
2 and we were told that two Members are running
3 late, one Member will be joining us at 10:30,
4 and another one after lunch. So just for the
5 record, what numbers are for the rest of the
6 day. Just go ahead and read, you know, the
7 time commitments made from each Member.

8 MS. NAKATA: Yes, Mr. Chair. Based on polling of
9 each of the Members' offices, the Chair's
10 available from 9:00 to 4:00; Member Anderson,
11 9:00 to 4:00; Member Mateo, 9:00 to 4:00;
12 Member Pontanilla, 10:30 to 4:00; Member
13 Medeiros, 9:00 to 3:00; Member Johnson, 9:00
14 to 2:00; Member Victorino, 9:00 to 12:30;
15 Member Baisa, 9:00 to 11:00; and Member
16 Hokama, 1:30 to 3:30.

17 CHAIR MOLINA: Okay. Those are the numbers.

18 Mr. Mateo, so, what we can do, if you
19 want, if there's no objections by the body, I
20 can give you guys a few minutes to go over the
21 revised matrix, which is dated November 6th.
22 If you have any questions, the revised matrix
23 shows what we have done thus far on most, if
24 not all, of the conditions. I think Condition
25 13 is what we're spending our good portion of

1 our morning on, and I believe there's also
2 some other considerations that the Applicant
3 would like us to look at as well.

4 COUNCILMEMBER MATEO: Chairman, 13 is the only
5 condition left.

6 CHAIR MOLINA: Of the Maui Planning Commission
7 condition recommendations, yeah.

8 COUNCILMEMBER MATEO: Yes. And once we complete 13,
9 then I believe Members have additional?

10 CHAIR MOLINA: I know at least one Member has some
11 other considerations. The Chair's intent -- I
12 know some of these conditions have been coming
13 in at the 11th hour, and, for the record, as
14 you well know, earlier this year I had asked
15 Members if you have any conditions, get them
16 into the Committee so that way it gives
17 everybody a chance to review these conditions
18 and not be blind sided on the floor, which can
19 create confusion. And, you know, it's just a
20 basic courtesy issue, so that way if you have
21 a very complex condition being proposed, it's
22 tough to make a decision, at least for me
23 anyway, to vote on something that's complex
24 and you only have a few minutes to think about
25 it. And for me, if I see something that's

1 very complex, I tend to vote no, because I
2 need some time to review, and if any Member is
3 not going to give me the courtesy of at least
4 a day to review it, there's an old saying,
5 when in doubt, you vote no.

6 So I just wanted to share my opinion on
7 that. And that is why I've asked Members if
8 you have a very complex condition to propose,
9 as a courtesy to the body and to the Committee
10 Staff, submit it ahead of time so each Member
11 can review it and then they may have questions
12 to ask about it.

13 COUNCILMEMBER MATEO: Okay.

14 CHAIR MOLINA: That is the -- how we should proceed
15 in my opinion. That is the most fair process
16 I can think of. Mr. Mateo.

17 COUNCILMEMBER MATEO: Thank you very much,
18 Mr. Chairman. I appreciate your comments, and
19 I concur. My only interest was having the
20 time to review this. And I don't care when,
21 as long as we have the opportunity to review
22 this. So -- and hopefully not during my lunch
23 break. So, you know, when -- at the option of
24 the Chair.

25 CHAIR MOLINA: Okay. Now, Members, do you want

1 to -- you need some time to review? Chair's
2 very open to that. Member Baisa.

3 COUNCILMEMBER BAISA: Along the lines of your
4 remarks, Chair, if there are Members that are
5 going to make additional conditions or propose
6 additional conditions, are those available, or
7 are we still waiting for those to creep out of
8 the wood work?

9 CHAIR MOLINA: I believe one Member stated publicly,
10 I think, at one of our recent meetings she has
11 about maybe four or five --

12 COUNCILMEMBER BAISA: Could we request that she
13 submit those so that we can be prepared?

14 CHAIR MOLINA: We can -- if that's the decision of
15 the body, so be it, yes. Now, you know,
16 that's pretty much at the Member's discretion
17 when they want to submit it. I mean, they
18 could submit it ahead of time or they could
19 wait to do it right here on the floor.
20 There's no rule against that, but, again, you
21 have your own individual opinions as to how
22 you want to proceed with conditions that are
23 just presented to you on the floor. And for
24 me, if I get presented with a very complex
25 condition that I need time to think about, if

1 I'm not ready to support something that's very
2 complex, I'm not -- I'm going to vote no, and
3 especially things that are presented at the
4 11th hour. So, Member Baisa.

5 COUNCILMEMBER BAISA: Well, Chair, my comment is
6 this. I understand that we all have that
7 right to bring anything up at the last minute,
8 but, you know, this process has been very long
9 and very arduous. And I don't know how many
10 meetings we've had already, but I know it's
11 gone over 20. And I think at some point we
12 should try to move to conclude this matter,
13 because it is a very, very important watershed
14 matter. However, there are many, many other
15 matters that are sitting in all of our
16 Committees trying to get done and we're unable
17 to do any of it. So I think at some point we
18 need to get all the issues on the floor, deal
19 with them, and move on. And that's just my --
20 my mana`o.

21 CHAIR MOLINA: Thank you for speaking up, Member
22 Baisa. And as you know, the Chair over the
23 last two weeks has been pushing the Members to
24 get towards that decision-making phase.
25 Because I've been hearing from the public,

1 from people both for and against it, that it's
2 high time you guys make a decision. I mean,
3 even the State Legislature made a decision on
4 a somewhat controversial topic before us,
5 so -- and I can certainly concur. It's high
6 time.

7 COUNCILMEMBER MEDEIROS: Mr. Chair.

8 CHAIR MOLINA: Mr. Medeiros, followed by
9 Mr. Victorino.

10 COUNCILMEMBER MEDEIROS: Good morning. Mahalo,
11 Mr. Chairman. Yeah, on -- when amendments are
12 submitted, and like you have commented on
13 that, it can be submitted in the meeting, but
14 as Member Mateo expressed, we need time to
15 review it, and part of the review is not just
16 reading over the words in the amendment, but
17 we may have to gather some information on our
18 own to give ourselves, as individuals, enough
19 information so we can make an informed
20 decision on the amendment. So I think, you
21 know, myself, and as Member Baisa have
22 expressed, we would appreciate being able to
23 review the amendments, you know, prior to the
24 meeting, if that's all possible, okay? But
25 thank you, Mr. Chairman.

1 CHAIR MOLINA: Okay, thank you for your comments,
2 Mr. Medeiros. Mr. Victorino.

3 COUNCILMEMBER VICTORINO: Yes, Mr. Chair. Thank you
4 very much. I, too, agree with my colleagues.
5 However, I will also say that we have and
6 continues to make this plan evolve into what I
7 call, and I think Member Baisa just mentioned,
8 that a watermark or landmark condition for
9 which all developers can look upon as being
10 what we would require everybody to do from
11 here on in. I think that's something the
12 large developers have to understand.

13 Secondly, I think when we have so many
14 changes and now we have a new one, that I
15 would request at least a half an hour recess
16 to review all of this so that we can
17 understand, and if there is questions
18 specifically covering certain issues, we can
19 ask. Because I remember some of these were a
20 week, two, three weeks ago we decided on them,
21 and I don't remember because we went this
22 direction, that direction, and I know a lot of
23 the public doesn't understand because they
24 say, well, didn't you guys decide on this?
25 No. Didn't you decide on that? No. We just

1 haven't decided on a lot of things, and when
2 we finally did, that was after starting here,
3 going there, and returning back to here, and a
4 number of conditions started one place, went
5 in one big circle, and came back to where we
6 originally started.

7 So I would request some time to review
8 it. I think some of the Members have the same
9 feeling, and so if we could have a half an
10 hour recess to review it, I would appreciate
11 it, Mr. Chair. Thank you.

12 CHAIR MOLINA: Okay, thank you, Mr. Victorino. And
13 now joining us for proceedings is Member
14 Anderson.

15 Member Anderson, what the Chair is going
16 to recommend to the body, we've just been --
17 we have a revised matrix. Chair would like to
18 give the body some time to review the matrix
19 to get caught up what was done and discussed
20 with each of the conditions over the immense
21 amounts of meetings that we've had. And I
22 believe that is what I am feeling from the
23 body, and also to consider any additional
24 conditions. Members have stated that they
25 would like to see any proposed conditions from

1 all to be submitted ahead of time before we go
2 into discussion, because we're getting close,
3 hopefully, to some kind of decision making,
4 but -- and earlier Staff read out, you know,
5 what Members will be here as far as time
6 commitments for today. So just to get you
7 caught up to speed on that. Member Anderson.

8 COUNCILMEMBER ANDERSON: I appreciate that, Chair.
9 I had a meeting with the Water Director this
10 morning, and I apologize for being late. So
11 on the very last column where it says
12 consensus or vote, this is the condition that
13 was synthesized out of all of these other
14 columns that we're going to be either working
15 from or voting on --

16 CHAIR MOLINA: Right.

17 COUNCILMEMBER ANDERSON: -- in whatever way?

18 CHAIR MOLINA: And some of them have been voted on
19 or some have had consensus.

20 Staff, can you comment on the -- on
21 your -- the structure of the matrix?

22 MS. NAKATA: Yes, Mr. Chair. The Members will note
23 that matrix dated November 6th is now 19 pages
24 long. The right-most column, now headed
25 consensus or vote, contains the latest version

1 of the condition, either -- which the body
2 either reached a tentative or general
3 consensus on or carried a vote on to amend the
4 bill as set forth. And so that right-most
5 column is the one, as Member Anderson stated,
6 that synthesizes the Committee's work on that
7 condition to date.

8 The Committee should also note that the
9 left-most column contains the topic and
10 comments. So Staff has tried to update that
11 with the most recent action by the Committee,
12 as well as to note, in certain instances,
13 responses received that the Committee has not
14 yet had an opportunity to discuss, for
15 instance, the land contribution response,
16 which we discussed earlier this morning, or
17 the response from DOE on the educational fee
18 condition, which was received on October 23rd.

19 Staff would also note that the Applicant
20 had submitted by correspondence, dated October
21 31st, I believe it was four or five proposed
22 conditions, which have been incorporated into
23 the third column, so that it now states the
24 dates 3/13/07, 7/20/07, and 10/31/07. So it
25 does incorporate the Applicant's most recent

1 submittal. Notably, on pages 18 to 19 of the
2 matrix, the Members will note the Applicant's
3 proposed Botanical Habitat Preserve Condition,
4 which has been folded in. And if the Members
5 would like to review the summary justification
6 for each of those that was submitted by the
7 Applicant, that's contained in the October
8 31st correspondence. There's also a map
9 attached to the back of the matrix, and this
10 corresponds to the Botanical Preserve
11 Condition that's been newly incorporated.

12 CHAIR MOLINA: Okay, thank you, Staff, for that
13 clarification.

14 Members, so -- I'm sorry, Member
15 Anderson, you have anything further to add?

16 COUNCILMEMBER ANDERSON: Yeah. Thank you for that
17 overview, Ms. Nakata.

18 I agree that we need some time to look
19 at this, Mr. Chairman. This is going to be
20 helpful. And I did hear some of the comments
21 made by Members before I got in here. I just
22 want to let everyone know I do not intend to
23 make any new conditions that I have not
24 already presented. That doesn't mean that I
25 wouldn't be willing to help fine tune some of

1 the existing conditions.

2 So the only thing that we have received,
3 then, since our last meeting is the Honua`ula
4 final report. I'm assuming this is the
5 cultural -- the cultural report, and is that
6 it?

7 CHAIR MOLINA: Staff, is that the most recent
8 document that we received?

9 MS. NAKATA: In addition to the letter from the
10 Mayor dated November 6th --

11 COUNCILMEMBER ANDERSON: Right.

12 MS. NAKATA: -- which is the document immediately
13 preceding the cultural report in Members'
14 binder 8.

15 CHAIR MOLINA: And the Mayor's letter relates to the
16 fire station and police contribution.

17 COUNCILMEMBER ANDERSON: Right.

18 CHAIR MOLINA: Okay.

19 COUNCILMEMBER ANDERSON: And I also doc transed a
20 written letter received from a constituent.

21 Thank you, Mr. Chairman.

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

23 Members, we'll go ahead and take a
24 recess to give you time to review the most
25 recent matrix that's been provided for you

1 dated November 6th. So we will recess this
2 meeting until 10:00 a.m. Meeting in recess.
3 (Gavel).

4 **RECESS: 9:27 a.m.**

5 **RECONVENE: 10:06 a.m.**

6 CHAIR MOLINA: (Gavel). The recessed Land Use
7 Committee meeting of October 18th, 2007 is now
8 back in session. Six minutes after the hour
9 of ten o'clock here on Thursday, November --
10 excuse me, Wednesday, November 7th.

11 Members, you've been given some time to
12 review the matrix dated November 6th. The
13 Chair is going to just offer a recommendation.
14 If you do have additional questions or you
15 need some adjustments, if you could hold off
16 on that and you can consult with Staff and
17 then at a later point we can discuss it in
18 Committee, because I'd like to continue the
19 discussion on Condition 13, which is related
20 to the cultural plan. And we do have the
21 Applicant's representative here as well to
22 respond to questions from a letter that was
23 given to you by Mr. Sinoto.

24 And during the break what also happened,
25 just for your information, we did not

1 incorporate into the matrix proposals from
2 Member Johnson, so that's a letter dated July
3 24th, 2007. So you should have a copy of it
4 on your desk. And also the proposed language
5 for the Applicant's offer for the fire --
6 proposed fire station and contribution to the
7 Police Department for a police station in
8 South Maui. So that language has been
9 submitted to you for your consideration. And
10 at a later point we'll go ahead and discuss
11 this proposal from the Applicant as well. So
12 I believe everybody should have these two
13 documents.

14 So with that being said, Members, let us
15 continue our discussions on Condition 13.

16 Mr. Jencks, do you have your
17 representative ready to respond to the letter
18 that was sent to the Committee?

19 And, Members, I believe that document --

20 Staff, the document, that letter from
21 Mr. Sinoto was dated October -- is that
22 October 30th? October 29th? I believe it was
23 October 29th for Mr. Sinoto.

24 MS. NAKATA: We have an October 30th correspondence
25 from Charlie Jencks attaching a letter from

1 Mr. Sinoto dated October 29th.

2 CHAIR MOLINA: 30th, okay, Members, we found that
3 letter, Mr. Jencks with Mr. Sinoto's comments.

4 Okay, Mr. Jencks, if you have Mr. Sinoto
5 ready to give us a brief overview of the
6 letter, response letter that was attached to
7 your October 30th letter to the Committee.

8 MR. JENCKS: Thank you, Mr. Chair. Yes, I did ask
9 Mr. Sinoto to be here today. The letter that
10 we provided that I sent to you was requested
11 by me of Mr. Sinoto to further clarify what --
12 you know, what the activities have been from
13 the beginning to the present with regard to
14 the cultural resource preservation plan and
15 archeological inventory work for the project,
16 and Mr. Sinoto is here today to answer any
17 questions you have, or even explain to you
18 what is included in the letter so it's very
19 clear to you.

20 CHAIR MOLINA: Thank you, Mr. Jencks.

21 And, Members, it's on page 9 of the new
22 matrix, 9 of 19, Condition 13. You'll note
23 the Maui Planning Commission condition's
24 wording of the condition states "That a
25 permanent cultural plan developed with the

1 approval of the Maui County Cultural Resources
2 Commission shall be developed relating to
3 access to cultural sites within Kihei-Makena
4 Project District 9 (Wailea 670)."

5 And you'll note in the next column is
6 the -- I guess the Applicant's version of the
7 condition, and I'll go ahead and have Staff
8 read that, 3/13/07 version replaced by the
9 10/31/07 version. Staff.

10 MS. NAKATA: "The Cultural Resources Preservation
11 Plan (CRPP), being prepared by Honua`ula
12 Partners LLC, its successors, and permitted
13 assigns, shall be completed in consultation
14 with Na Kupuna O Maui, the CRC, and OHA and
15 approved by SHPD. The approved CRPP shall be
16 submitted as part of the Phase II application.
17 The CRPP shall primarily address items
18 pertinent to preservation, including, one,
19 access to specified sites; two, appropriate
20 protocol for visitations, and three, manner
21 and methods of preservation."

22 CHAIR MOLINA: Okay, thank you very much, Staff.
23 And at our last meeting I believe Member
24 Pontanilla requested that OHA respond to
25 Mr. Jencks' letter to Mr. Namuo from OHA, and

1 it has been brought to my attention that we
2 will have an -- we do have an OHA
3 representative that's on the way with some
4 type of response. And once that person gets
5 here, we'll try and fit their response letter
6 into this particular condition, because it
7 does -- I guess the Applicant is proposing
8 that OHA be involved in this cultural resource
9 plan.

10 Good morning, Mr. Sinoto.

11 MR. SINOTO: Good morning.

12 CHAIR MOLINA: And thank you for being here. You
13 have a three-page letter, somewhat lengthy
14 letter. I would ask you to give an overview
15 on your comments in this letter as it relates
16 to the proposed cultural plan, Condition
17 Number 13, and afterwards I'll open the floor
18 for questions from the Members.

19 MR. SINOTO: Thank you, Chairperson Molina and
20 Members. This letter essentially clarifies or
21 explains certain major misinformation and
22 misleading remarks that have come out through
23 the course of this hearing, and perhaps one
24 such contention is that our consultation with
25 SHPD ended back in 2002, but that's not really

1 true. We've been having ongoing discussions
2 with SHPD staff, SHPD Maui staff regarding
3 their review-- their last review of our
4 revised report, and some of the main body of
5 this letter talks about what -- what sorts of
6 discussions have taken place regarding the
7 issues that were presented in that January
8 17th, 2002 letter.

9 I know that you Members are fairly
10 familiar with my letter, because I understand
11 that you had an opportunity to review it in
12 the last couple of sessions, and so I'm really
13 not going to go into detail about too much of
14 it. Rather, if you have any specific
15 questions for me regarding any part of this
16 letter, I will be happy to answer that --
17 those for you. But I'd like to also add that
18 most recently Maui Staff Archeologist,
19 Ms. Jenny Picket, and also the Cultural
20 Specialist, Mr. Hanano Rodrigues, accompanied
21 me out in the project area for a field visit
22 and orientation of the sites. Prior to this,
23 the Maui SHPD office had never done a field
24 inspection, so currently I think there's a
25 little bit more familiarity regarding the two

1 different areas, the northern two-thirds of
2 the project area, as well as the southern
3 third where the majority of the sites occur.

4 So at this point, we are still in
5 continuing consultation with SHPD, and they're
6 looking forward to a data recovery plan to be
7 transmitted by us as the next phase of work.

8 CHAIR MOLINA: Thank you, Mr. Sinoto. Before I open
9 up the floor for questions, on page 3 of your
10 letter, the next to last paragraph, it
11 mentions during informal meetings held at the
12 Maui SHPD offices on Wednesday, 17 October,
13 2007, various aspects of the subject property
14 were discussed and our current understanding
15 is that a letter is forthcoming shortly from
16 SHPD. Can you give us -- your -- I guess your
17 definition of shortcoming? I mean, what have
18 they told you when this letter would be
19 coming? Because here we are, it's November
20 7th, and have they given you a time --
21 specific timetable?

22 MR. SINOTO: No, not really, but there was one item
23 that they requested from us, and that is an
24 overlay of the archeological sites on top of
25 the plan map that's been shown at these

1 hearings prepared by PBR, so we're in the
2 process of doing that and forwarding that to
3 them.

4 CHAIR MOLINA: And about how soon will you be able
5 to get that to --

6 MR. SINOTO: I'm not sure. PBR has all the raw data
7 from me, and right now they're in the process
8 of preparing that map.

9 CHAIR MOLINA: So it's sort of out of your hands at
10 this point?

11 MR. SINOTO: Yeah, and also, just to answer your
12 question about the scheduling of reviews
13 through SHPD, currently their review
14 scheduling is pretty erratic. For instance, I
15 had a review for an Oahu monitoring plan that
16 was submitted in August. I haven't received
17 anything back except for the transmittal
18 acknowledgment, which I received last week,
19 and I had another preservation plan in since
20 June, which was just approved last week. So
21 I'm not sure, you know, what length of time
22 the Maui office is looking at, nor did they
23 give me any hints as to how soon they could do
24 so.

25 I know that their Administrator may be

1 leaving, so all letters have to get signatures
2 from the Oahu office. So that involves
3 another delay, possible delay.

4 CHAIR MOLINA: Okay. I guess it's been well
5 documented, the work is stacking up, and I
6 guess with the shift in personnel it's been, I
7 guess, quite difficult for them to give out
8 timely responses.

9 One last question, on page 2, the second
10 paragraph, you end it by saying, "The
11 inadequate nature of the previous surveys are
12 being misconstrued or deliberately being
13 misrepresented to somehow characterize the
14 more recent surveys completed by the current
15 Applicant's team."

16 Can you elaborate on that, please?

17 MR. SINOTO: Yes. At the initial submission by
18 previous developers or previous owners, there
19 were two archeological surveys. One was done
20 in 1979 and another done in 1988. And in
21 terms of today's inventory survey standards,
22 both surveys were sorely inadequate. The
23 first survey, in fact, missed the whole
24 southern third of the project area. They
25 construed that wall to be the southern

1 terminus of the project area, whereas that's
2 just the beginning of the southern third. So
3 one of the surveying firms completely missed
4 that area.

5 And the -- the other company essentially
6 said they looked through the area, but
7 obviously they hadn't because they didn't
8 relocate any of the previously recorded sites
9 that were recorded in the mid '70s by the
10 state for the Pi'ilani Highway extension
11 project.

12 CHAIR MOLINA: Okay, thank you, Mr. Sinoto.

13 Members, the floor is open for questions
14 from Mr. Sinoto related to his October 29th,
15 2007 letter to the Committee. Okay, Member
16 Anderson.

17 COUNCILMEMBER ANDERSON: Mr. Sinoto, thank you for
18 being here. I don't think anybody has
19 misrepresented anything. All we've done is
20 quoted comments made by SHPD and by OHA. And
21 I appreciate this letter that you've given us
22 in response to OHA's letter; however, it is
23 just your version of verbal discussions. So
24 it doesn't give us any substantiation of where
25 SHPD is right now. And so I'm going to just

1 ask you straight out, we still have not
2 received a review letter from SHPD beyond the
3 date of January 2002, and in that letter they
4 said that they were awaiting the revisions to
5 draft 2 of your inventory survey. Have you
6 revised draft 2 to their satisfaction?

7 MR. SINOTO: Essentially, if you look at the wording
8 of the ending of that letter, it says to add
9 the revisions to that amendment report, and
10 that's pretty much what I've done through the
11 continuing discussions and with submittals of
12 the maps that they've requested.

13 COUNCILMEMBER ANDERSON: And so why haven't you
14 submitted any of your changes to us? The last
15 inventory survey we have is dated June 2001.

16 MR. SINOTO: Well, the map submittals are attached
17 to this letter. That's the first item --

18 COUNCILMEMBER ANDERSON: So those are the only
19 changes?

20 MR. SINOTO: The first item that they've asked for
21 in that letter was maps of previous
22 archeological studies within the project area
23 and within the neighboring region.

24 COUNCILMEMBER ANDERSON: Have you changed your
25 survey transects? Because they also said

1 those were not acceptable.

2 MR. SINOTO: The survey transects were actually

3 resolved through discussion with

4 Dr. Kirkendall, when she was still at SHPD.

5 COUNCILMEMBER ANDERSON: Okay. And what about the

6 northern portion? They also said that was

7 still not surveyed at -- for inventory --

8 MR. SINOTO: Again --

9 COUNCILMEMBER ANDERSON: -- review level.

10 MR. SINOTO: -- the northern portion was resolved

11 through aerial photography that I took into

12 the office and discussed with Dr. Kirkendall,

13 and in that matter the two letters that are

14 attached to this October 29th letter from the

15 division shows that the northern portion has

16 already been -- shown to be no effect for the

17 northern portion. That's why I attached the

18 letters.

19 COUNCILMEMBER ANDERSON: I beg to differ with you,

20 Mr. Sinoto. These letters have to do with a

21 water tank.

22 MR. SINOTO: Yeah, but --

23 COUNCILMEMBER ANDERSON: They don't --

24 MR. SINOTO: The water tank is --

25 COUNCILMEMBER ANDERSON: Can I please finish? Based

1 on the submitted grading onsite plan, we
2 understand the proposed undertaking consists
3 of all grading and grubbing in connection with
4 the installation of a tank, lines, a pump
5 station, and appurtenances related to the
6 water system.

7 So the water system is only a very small
8 area in -- in relationship to the whole 670
9 acres. So back to my question. Have you
10 gotten approval from SHPD for the survey of
11 the northern section? The January '02 letter
12 says that it's still not surveyed at inventory
13 review level.

14 MR. SINOTO: I have obtained verbal approvals. It's
15 just it's very difficult to get any written
16 approvals right now, especially with the
17 departure of Dr. Kirkendall. And as I
18 explained in this letter, what's happening is
19 that the staff members that are currently
20 working at SHPD need to be -- need to review
21 all of the agreements that we've made or the
22 understandings that Dr. Kirkendall and I had
23 on certain of the issues that were included in
24 that 2002 letter, so that's --

25 COUNCILMEMBER ANDERSON: Also did you address their

1 request for testing? Have you done any
2 testing on the site? That was also requested
3 in the January '02 letter.

4 MR. SINOTO: Yes, the further testing, especially --
5 that was specifically for the platform sites,
6 and further testing of those sites were
7 actually precluded by the comments from
8 Ms. Dana Hall, because one of the potential
9 interpretations of those formal sites were
10 that they may contain human burials, and --

11 COUNCILMEMBER ANDERSON: So you've done the testing?

12 MR. SINOTO: Excuse me. Then the owners agreed to
13 preservation of those specific sites so that
14 testing isn't really necessary anymore.

15 CHAIR MOLINA: Member Anderson.

16 COUNCILMEMBER ANDERSON: So, Mr. Sinoto, all these
17 responses to the request that SHPD made in
18 January '02 should have been sent to them in a
19 response letter to their review comments.
20 That is the procedure. So you're saying all
21 this has been done in discussion. You have no
22 letter to give us showing that you've
23 responded to all their review comments in
24 writing?

25 MR. SINOTO: Well, in fact, what I was waiting for

1 was a letter from Dr. Kirkendall confirming
2 that we have these understandings based on our
3 discussions, and in terms of the --

4 COUNCILMEMBER ANDERSON: But -- but -- excuse me,
5 Dr. Kirkendall has been gone from SHPD for
6 some months now.

7 MR. SINOTO: Yeah, she has, so that's one of the
8 difficulties that we faced, especially towards
9 the latter part of her tenure there. But,
10 again, as any review letter from SHPD at the
11 closing portion states, if you -- if you have
12 a disagreement with the review comments, you
13 always have the opportunity to discuss these
14 with them. In terms of the further testing,
15 we had a difference of opinion there. In
16 terms of doing further inventory instead of
17 data recovery, we had a difference of opinion
18 there.

19 So those two items are really things
20 that were up for discussion, and we did
21 discuss those. And then recently the current
22 staff agrees that those things are actually
23 the field or project director's prerogative.
24 It's not something they can really dictate to
25 us what to do during data recovery, what to do

1 during an inventory phase. Because indeed
2 inventory survey is the initial phase that
3 regulatory review takes place on, and what it
4 does is it -- it gives you the initial
5 significance evaluations that gives you the
6 actual legal teeth to go on to do further
7 work.

8 COUNCILMEMBER ANDERSON: Mr. Sinoto, have you
9 received approval from SHPD for your inventory
10 survey yet?

11 MR. SINOTO: I haven't received a written approval
12 from them --

13 COUNCILMEMBER ANDERSON: Okay.

14 MR. SINOTO: -- although I've received verbal
15 approval.

16 COUNCILMEMBER ANDERSON: Well, we need written
17 approval, because without written approval
18 from SHPD, you can't really go to the next
19 step. You can't provide us, you know,
20 significant determinations. You can't provide
21 us with a preservation plan until the survey
22 is complete.

23 Did you send these surveys to OHA for
24 their review?

25 MR. SINOTO: No, because we don't send anything to

1 OHA normally. What happens is SHPD will send
2 any materials for the public review portion of
3 their SHPD Historic Preservation Review. It's
4 not our -- the archeologist that does the
5 studies to send anything to OHA. That's not
6 part of the public review process.

7 COUNCILMEMBER ANDERSON: So, Mr. Chair, I think we
8 need to wait for the letter from OHA, because
9 they're quite disturbed by this. We do have a
10 response coming. Hopefully it will come in
11 today. I just feel that we don't have
12 anything finalized here, anything approved by
13 SHPD. With all due respect to Mr. Sinoto,
14 it's his -- his telling us what has verbally
15 been discussed is not enough. I'm finished.
16 Thank you.

17 CHAIR MOLINA: Thank you, Member Anderson.

18 Committee Members, questions for
19 Mr. Sinoto regarding his October 29th letter?
20 Mr. Medeiros.

21 COUNCILMEMBER ANDERSON: Oh, one other thing,
22 Mr. Chair, if I could.

23 CHAIR MOLINA: Member Anderson.

24 COUNCILMEMBER ANDERSON: I just wanted to add, I
25 think it's imperative that we have an overlay

1 map so we know where these sites are, and that
2 the ones that they intend to destroy are also
3 indicated on the map. Because we still don't
4 have any approved significance determination
5 that would lead us to understand what sites
6 are going to be approved for preservation
7 legally in the preservation plan. Thank you.

8 CHAIR MOLINA: Thank you, Member Anderson. I
9 believe the Applicant will take that request
10 into consideration.

11 Members, any other questions for
12 Mr. Sinoto? At this point, the Chair would
13 hope to make a decision on this condition
14 today, and I know Chair has been informed that
15 OHA -- by the way, the Chair would like to
16 recognize the presence of Mr. Pontanilla to
17 our proceedings this morning. And,
18 Mr. Pontanilla, you did make that request for
19 OHA to respond to Mr. Jencks' letter, and I've
20 been told that a letter should be forthcoming
21 sometime today. So hopefully it gets to us
22 soon, because if the letter doesn't get to us
23 today, the Chair intends to have a decision
24 made on this condition.

25 And, again, Members, first of all, the

1 Applicant has submitted an alternative version
2 of Condition 13 for our consideration. Is
3 this -- Chair would just like to get some
4 direction from the Committee. Is this the
5 condition we would like to kind of work off of
6 or -- it seems like there's been additional
7 language added to the Maui Planning Commission
8 version of it.

9 Can I get Staff comments from Planning
10 Department as well? On page 9 of the new
11 matrix, Director Suyama, thank you for being
12 here this morning as well.

13 The Chair didn't take the time to
14 recognize our other personnel here,
15 Corporation Counsel, Mr. Hopper; and Committee
16 Staff, Ms. Nakata; and Committee Secretary,
17 Ms. Frias.

18 Deputy Director Suyama, are you able to
19 provide comment on the Applicant's version of
20 this condition?

21 MS. SUYAMA: The Applicant's version has been
22 expanded to identify, besides the cultural --
23 Maui County Cultural Resources Commission
24 dealing with the cultural plan, to include
25 some of the consulting groups such a Na Kupuna

1 O Maui, in addition to the CRC and OHA, and
2 they're looking at this cultural plan being
3 approved by the State Historic Preservation
4 Division. Ours initially was that it would be
5 approved by the Maui County Cultural Resources
6 Commission.

7 The other thing that -- in their terms
8 is that they're specifying what should be
9 addressed in the cultural plan, which is
10 access to specified sites, appropriate
11 protocol for visitation, and the method --
12 manner and methods of preservation, which are
13 normally within a cultural resources
14 preservation plan. It's just that they're
15 identifying more specifically what should be
16 included.

17 CHAIR MOLINA: Thank you, Director.

18 Committee Members, questions for the
19 Director regarding to the Applicant's version
20 of it? Is this something the Committee would
21 prefer to work off of? Any objections to the
22 additional language that's been added into the
23 condition? Members, Chair is awaiting your
24 recommendation. The Chair basically has no
25 objection to expanding on it, adding into, you

1 know, not including any other proposed
2 amendments that may be considered. Member
3 Anderson.

4 COUNCILMEMBER ANDERSON: So you're going to go ahead
5 with this condition, despite the fact that
6 we're waiting for a letter from OHA in
7 regards --

8 CHAIR MOLINA: Well, at this point it's discussion.
9 I haven't called for a decision yet. I'm just
10 asking the Members if you either want to work
11 off the Maui Planning Commission condition,
12 which is in the second column, or work on the
13 Applicant's version, which is -- which is
14 expanded upon it. So I'm just kind of wanting
15 some direction from the Committee. And I'll
16 withhold decision making until we get -- I
17 know -- well, let's ask Mr. Pontanilla, as the
18 requestor of the letter from OHA, would you
19 prefer that we withhold decision making, I
20 mean, from your perspective, since you did
21 request a letter from OHA?

22 VICE-CHAIR PONTANILLA: Yes, Chair, if they don't
23 send us a response by today, you know, it
24 would be your prerogative to make that
25 decision to --

1 CHAIR MOLINA: The Chair's prerogative is if the
2 letter doesn't get to us by today, we will go
3 ahead and proceed with decision making on
4 the --

5 COUNCILMEMBER VICTORINO: Mr. Chair.

6 CHAIR MOLINA: -- condition as amended.

7 Mr. Victorino.

8 COUNCILMEMBER VICTORINO: That's fine and well, but
9 when is today? What is the deadline? Because
10 you had stated earlier that approximately 3:00
11 p.m. we will lose quorum. So is that the day
12 right there?

13 CHAIR MOLINA: Well, that would make common sense,
14 yeah, 3:00 p.m. When we lose quorum, then we
15 don't have any more meeting, so I would give
16 it till -- if the Members want to go to that
17 late, till 3:00 p.m., so be it, but I was just
18 handed a note that someone will be delivering
19 a letter to us today. No specifics as far as
20 what time. My guess is someone from OHA is
21 working on drafting the letter, so I'm hopeful
22 it will get to us today by -- whether it be
23 before noon or by 3:00 p.m. when we lose
24 quorum.

25 Member Anderson.

1 COUNCILMEMBER ANDERSON: Mr. Chair, if we could
2 respectfully take this up after lunch, then
3 that would give them time to get the letter.
4 I wish that we had the overlay map too, but I
5 doubt that's going to happen. We should have
6 had that so many months ago. I asked for that
7 many, many times, months ago so that we could
8 see where these sites are. We know that the
9 significant sites are in the same area as the
10 low land forest, so I would request that we
11 wait until after lunch. We'll have
12 Ms. Johnson here and Mr. Hokama here at that
13 time.

14 CHAIR MOLINA: Okay, Members, comments on the
15 request to address it after lunch?

16 Mr. Medeiros -- Member Baisa, I'm sorry.

17 COUNCILMEMBER BAISA: That's all right. Let him go
18 ahead.

19 CHAIR MOLINA: All right, Mr. Medeiros.

20 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. No,
21 I just wanted to follow up on the -- Member
22 Pontanilla's request for response or letter
23 from OHA. During that discussion of that
24 particular request, didn't we also request if
25 we could have input from OHA's Maui Trustee,

1 Mr. --

2 CHAIR MOLINA: Yeah, Mr. Rodrigues.

3 COUNCILMEMBER MEDEIROS: -- Mossman.

4 CHAIR MOLINA: And --

5 COUNCILMEMBER MEDEIROS: Did we make a formal
6 request for input from Trustee Mossman?

7 CHAIR MOLINA: I don't believe we ever made a formal
8 request from Mr. Mossman. I know at the last
9 meeting I mentioned the possibility of having
10 Mr. Rodrigues attend and also Ms. Picket,
11 who's from the Maui office of SHPD, but as far
12 as OHA, I don't recall.

13 Staff, do you recall, was there ever a
14 request for Mr. Mossman to --

15 MS. NAKATA: No, Mr. Chair.

16 CHAIR MOLINA: Yeah, yeah, I don't believe that
17 request was ever made formally by anyone.

18 COUNCILMEMBER MEDEIROS: Because it was my
19 understanding, through some informal
20 conversations with Trustee Mossman, that
21 normally for OHA to take a position on any
22 issue or subject, it usually takes the board
23 to meet and to decide that that's their
24 response to something. And having seen some
25 of their meetings on *Akaku* on different

1 islands, that was reiterated in one of the
2 meetings that I watched that indeed none of
3 the individual members can take a position for
4 OHA, and if there is a position that is
5 expressed as OHA's position, it takes the
6 board to vote on it and to agree that that's
7 going to be their position.

8 So I just was wondering if Trustee
9 Mossman, you know, had any input on our
10 discussions in a previous meeting.

11 CHAIR MOLINA: Uh-huh. I know with the discussion I
12 had with Mr. Mossman, I think I mentioned at
13 our last meeting, the copy of Mr. Namuo's
14 letter was distributed to all board members,
15 but Mr. Mossman was not formally consulted to
16 give his input as the Maui representative on
17 this proposal, which I think caused some --
18 maybe controversy is too strong a word, but it
19 would be like somebody making a decision on a
20 matter in your territory and not formally
21 discussing it with you first to get your
22 mana`o, and I think that's where there was a
23 hang up, if you will, Mr. Medeiros. But there
24 was no formal request to get Mr. Mossman here.

25 However, if that's -- you know, again,

1 if the Committee would like to hear from
2 Mr. Mossman as the OHA representative, I think
3 to be fair, you know, that's something we can
4 consider. Because I know if we're going to
5 wait for the OHA letter to -- that response to
6 Mr. Jencks' letters, then by all means, then
7 maybe we should consider having Mr. Mossman,
8 if he is available, to share his mana`o on
9 this. And I think we need to find out -- I
10 know Mr. Namuo is the administrator, if he
11 wrote that or was it a staffer that wrote that
12 for him and he just signed it. You know, so
13 it bears worth investigating into.

14 So just to get a clear perspective as to
15 where OHA is on this matter, and as you stated
16 earlier, is it the protocol that the board
17 should first meet on this and then take a
18 position statement? Because when you read the
19 OHA letter, it sounds like Mr. Namuo is
20 speaking for OHA as -- you know, he seems to
21 be taking a position that OHA would like this
22 and OHA would like that. And that's the key
23 point. When you say OHA, you're saying the
24 organization. So I think that's where we need
25 to differentiate, if this is an individual

1 opinion from the administrator or was it OHA
2 as a board itself?

3 So I think you bring up a good matter
4 that may be worth looking into. So when we
5 get that letter from OHA, maybe we can expound
6 on that discussion.

7 COUNCILMEMBER MEDEIROS: Yeah, I think receiving the
8 letter for OHA will give us some direction
9 after we review that letter. So I think we
10 can leave it until we receive that letter.
11 Mahalo, Mr. Chairman.

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

13 Member Anderson.

14 COUNCILMEMBER ANDERSON: Yeah, I would just like to
15 clarify, Mr. Chairman, that the letter that we
16 received from OHA is not taking a particular
17 position. I mean, I guess you could interpret
18 it that way. All they're doing is reviewing
19 the Chapter 6E process in regards to this
20 project. And they're saying they have not
21 been included in the process, and they're
22 asking us to include them.

23 We're bound by our own Change in Zoning
24 requirements, Mr. Chair, to have a
25 preservation and mitigation plan that has been

1 approved by SHPD and by OHA. So, you know,
2 we're moving forward in a final decision on
3 this project without the necessary
4 preservation mitigation plan, without even a
5 completed inventory survey approved by SHPD,
6 and OHA is telling us in this letter, please
7 have the Chapter 6E review process adhered to
8 and put them in the loop.

9 And so it's my understanding that the
10 board does not get involved in every State
11 Historic Preservation Review letter. It's a
12 standard practice for the staff to do this.
13 They have staff members who are skilled in the
14 Chapter 6E review process, and that's why this
15 letter was written.

16 Again, a preservation in our Change in
17 Zoning application requirements, a
18 preservation mitigation plan which has been
19 reviewed and approved by the Department of
20 Land and Natural Resources and the Office of
21 Hawaiian Affairs of the State, and all they're
22 telling us is please adhere to this in their
23 letter.

24 So, you know, if you want to wait for
25 Mr. Mossman's input, that would be fine too,

1 but then he's only one member of the board,
2 and I don't think he can speak on behalf of
3 the board as one Member. I just want it to be
4 very clear to Members that this is a standard
5 review letter done by their staff all the
6 time. So, you know, I don't see it as a
7 position paper in any way, but I guess some
8 Members might want to interpret it that way.
9 I just think that we need to have the legally
10 required review process followed.

11 CHAIR MOLINA: Thank you, Member Anderson. And
12 thank you for that clarification. I guess for
13 some of us, you know, as we interpret the
14 letter, it caused some confusion, and that's
15 all, for me anyway, what I want cleared up.
16 And I -- as you can see, the Applicant's
17 proposal is to include OHA in the process, so
18 I would --

19 COUNCILMEMBER ANDERSON: Well, they have to by law.

20 CHAIR MOLINA: And I think in the initial condition
21 that was by the Maui Planning Commission it
22 doesn't make any mention of, you know, having
23 OHA and Na Kupuna O Maui involved in the
24 review. So, you know, my suggestion to the
25 Committee is, you know, to work off the

1 Applicant's proposal, which is expounded, and
2 any other considerations we can throw into
3 that condition as well, but as a starting
4 point. So --

5 COUNCILMEMBER ANDERSON: Mr. Chair, if I may.

6 CHAIR MOLINA: Hang on. I can sense from the
7 Members that you would not like to act on this
8 until you get the OHA response, so we'll give
9 them until today, hopefully before 3:00
10 o'clock before we lose quorum. Member
11 Anderson.

12 COUNCILMEMBER ANDERSON: Thank you, Chairman. I
13 just want Members to know that, you know, in
14 each stage of the Chapter 6E review process
15 there is an approval point, approval of the
16 inventory survey, then approval of the
17 significance criteria, which basically --
18 significance determination, which basically
19 makes the decision on what sites will be
20 destroyed and what sites will be saved. And
21 at that level it's a requirement of the State
22 Historic Preservation Division rules and
23 regulations that the significance
24 determination be put on the website of SHPD so
25 that anybody can review it, not just the CRC

1 or Na Kupuna O Maui or OHA, but anybody
2 throughout the State has a legal right,
3 according to their regulations, to go on line
4 and review these significance determinations
5 so that they have a chance to respond if they
6 feel that they're not adequate that -- like I
7 said, there may be ancestors from this
8 particular area who doesn't live right here,
9 who's not aware of what we're doing, who may
10 be living on Oahu, who may have certain
11 information, like I said the other day, that
12 they could add to some of these significance
13 determinations. And SHPD by law is required
14 to review those comments and make changes if
15 necessary.

16 So, you know, what we're following,
17 Members, is a highly prescribed legal process,
18 and for us just to push it off and say the CRC
19 will deal with it later is really outside the
20 law. So in the meantime, if anybody wants me
21 to pass out the regulations for State Historic
22 Preservation Review to substantiate what I'm
23 saying, I will be happy to do that once again,
24 Chairman. Thank you.

25 CHAIR MOLINA: Thank you, Member Anderson.

1 COUNCILMEMBER MATEO: Chairman.

2 CHAIR MOLINA: Mr. Mateo.

3 COUNCILMEMBER MATEO: Chairman, thank you. I concur
4 with Member Medeiros in terms of trying to get
5 access to the Maui representative from OHA.
6 OHA does at time take their positions on a lot
7 of issues. Case in point, on Molokai, the
8 La`au development position, they did not take
9 a position on the development itself. They
10 took a position on the developed -- community
11 development of a plan that would include or
12 does include many aspects, and the lead is the
13 island's representative.

14 So it would be good for us to hear his
15 perspective so we have a better understanding
16 of whether or not he understands the issue to
17 begin with. It will provide us the
18 opportunity to, one, get his opinion and, two,
19 if the opinion is not solid enough, to provide
20 additional information for him to develop that
21 position.

22 Your original question, Mr. Chair, of
23 the expansion consideration, because we're
24 still waiting for OHA's communication to come
25 in, at this point I don't really -- I don't

1 mind the expansion being added in, because as
2 we receive the communication, we will have
3 further opportunities to continue to amend.
4 So, you know, at least it will give us a
5 starting point at this time. So to respond to
6 your original question, I don't -- I don't
7 have a problem in the expansion.

8 CHAIR MOLINA: Okay, thank you very much, Mr. Mateo.
9 I'm going to suggest to ask Staff if there's a
10 way we can get Mr. Mossman here. I don't know
11 if the Applicant knows Mr. Mossman or if
12 there's a way to get ahold of him. I think it
13 wouldn't hurt to get his -- some mana`o.
14 Okay, and I see we have an OHA representative
15 that could provide us some access to
16 Mr. Mossman if he is available to come share
17 his thoughts on this. So we will withhold
18 decision making on Condition 13 until we get
19 the letter from OHA and, if possible, we can
20 get Mr. Mossman's thoughts as well.

21 So very good, Members, so at this point
22 the Chair would like -- since we do have some
23 time left, I know we're going to lose Member
24 Baisa, and I know we're trading off, we're
25 losing some Members and gaining some Members

1 at a later point, and we have Member Johnson
2 just walking in the door.

3 Let us go back to the first page of the
4 new matrix, Members. There is a -- the
5 Applicant wants us to consider an additional
6 condition, I should say, related to water or
7 verification of water source in the third
8 column of the matrix. The date is October
9 31st, '07.

10 Staff, can you read the proposed
11 condition from the Applicant?

12 MS. NAKATA: "Honua`ula Partners LLC, its
13 successors, and permitted assigns, shall
14 provide an engineering report for new drinking
15 water sources for regulated public water
16 system concurrent with the development of
17 potable and non-potable water sources for any
18 Phase II application for Project District 9.
19 This report shall be prepared and sealed by a
20 registered engineer licensed to practice in
21 the State of Hawaii, and all work shall be in
22 accordance with this document."

23 CHAIR MOLINA: Thank you, Staff.

24 Mr. Jencks, can you come up and further
25 elaborate on why you're asking us to consider

1 this condition? And then I'll open the floor
2 up for questions from the Members.

3 MR. JENCKS: Thank you, Mr. Chair. Yeah, the basis
4 for this recommendation from us is the work
5 that's been done by the Water Committee of
6 this Council to date. My understanding and my
7 review of the current status of the bill that
8 came out of the Committee this last Friday I
9 think provides really good direction for what
10 we need to do. I wrote this up as a way to
11 take what was -- what was agreed to in
12 consensus, I believe, in the far right column
13 and get it to something that's a little more
14 to the point.

15 With this bill coming out of the Water
16 Committee, perhaps you can take this proposal
17 and add something that says or as mandated by
18 County Ordinance. Because the bill that has
19 come out of Committee is a really good bill.
20 I mean, it gives good direction. Does a good
21 job. So I think we ought to be doing what's
22 in that bill.

23 CHAIR MOLINA: Okay.

24 MR. JENCKS: To be fair.

25 CHAIR MOLINA: Thank you, Mr. Jencks.

1 Members, comments on Mr. Jencks'
2 proposal as an additional condition? Hang on,
3 Mr. Jencks. I think Member Anderson has a
4 question for you.

5 COUNCILMEMBER ANDERSON: I can't find it, so if
6 someone could give me a copy, that would help.

7 CHAIR MOLINA: It's on the first page of your new
8 matrix, the November 6th. It's in the third
9 column.

10 COUNCILMEMBER ANDERSON: Oh, I thought it was one
11 that was handed out. I'm sorry.

12 CHAIR MOLINA: I believe Mr. Jencks also had a
13 letter as well.

14 COUNCILMEMBER ANDERSON: He submitted this --

15 CHAIR MOLINA: Yeah.

16 COUNCILMEMBER ANDERSON: And we've never seen it
17 until today and it was submitted on the 31st?

18 CHAIR MOLINA: Right, and we never got a chance to
19 go over it. So what Staff did -- what I'm
20 working off is what Staff did was took one of
21 those several conditions that Mr. Jencks
22 proposed and put it on the matrix. So we're
23 just working on one of several additional
24 conditions being proposed by Mr. Jencks. So
25 Chair would like to get your comments on his

1 proposal for this particular condition.

2 COUNCILMEMBER ANDERSON: If you give him a chair,
3 let him sit down.

4 CHAIR MOLINA: Any other comments, Members? Is this
5 something the Committee would like to consider
6 or deny?

7 COUNCILMEMBER MATEO: Consider.

8 COUNCILMEMBER VICTORINO: Consider.

9 COUNCILMEMBER BAISA: Consider.

10 CHAIR MOLINA: Okay. All right, Chair will support
11 adding this as an additional condition. Any
12 objections?

13 COUNCIL MEMBERS: No objections.

14 CHAIR MOLINA: Okay.

15 COUNCILMEMBER ANDERSON: Chairman.

16 CHAIR MOLINA: Member Anderson.

17 COUNCILMEMBER ANDERSON: This doesn't really conform
18 to the bill that we have, because what happens
19 if the engineering report does not provide for
20 an adequate source, does not address -- if
21 Members will look at the condition that we
22 discussed previously that I presented, it
23 allows, first of all, for several things that
24 this doesn't address, and that is the disposal
25 method for desalination, the effects of the

1 private system on down-gradient wells and
2 adjacent coastal waters and wetlands. It
3 doesn't provide that the analysis shall be
4 reviewed by DLNR, Commission on Water Resource
5 Management, the State Department of Health,
6 the County Water Department. It doesn't
7 provide that the analysis shall include the
8 cost of operation of the private water system
9 and the fees to be charged for each unit. All
10 of this should be done prior to Project
11 District Phase II application.

12 And then if the source proves
13 unreliable, that they have to come back to the
14 Council, either, you know, to show a new
15 adequate source or to allow the Council to
16 repeal the zoning. The whole idea is that you
17 have to have a reliable supply of water in
18 order to get the zoning. Again, our
19 application requirement for a Change in Zoning
20 requires a water source supply and
21 distribution analysis that's been reviewed by
22 the Department of Land and Natural Resources,
23 our Water Department, and our Public Works.
24 None of that has been done.

25 An analysis means you have hard data,

1 not just promises that we think we're going to
2 get this water and there's going to be enough
3 of it and it's not going to have an adverse
4 impact to down-gradient wells. We don't know
5 any of that, Mr. Chairman.

6 CHAIR MOLINA: Thank you, Member Anderson.

7 Member Mateo.

8 COUNCILMEMBER MATEO: Chairman, thank you, and I
9 think -- I think the intent, as Mr. Jencks had
10 stated, was, one, the bill was a good bill.

11 Two, he was more or less in support of the
12 existing bill, just so I don't put words in --

13 MR. JENCKS: No, that's what I said.

14 COUNCILMEMBER MATEO: Thank you. So perhaps similar
15 verbiage as we did with housing, where we
16 indicate the Applicant will comply with MCC
17 2.96, perhaps we should put the same verbiage
18 or similar verbiage relative to the bill. We
19 should also attach that so it is specific that
20 they will comply with that specific ordinance.
21 That might be easier.

22 COUNCILMEMBER ANDERSON: Should it pass.

23 COUNCILMEMBER MATEO: Huh?

24 COUNCILMEMBER ANDERSON: Should it pass.

25 COUNCILMEMBER MATEO: Yeah, yeah.

1 CHAIR MOLINA: So if I'm reading this correct here,
2 you're suggesting that we incorporate language
3 that should -- Member Anderson, if I should
4 say it, the Show Me the Water Bill passes,
5 that the --

6 COUNCILMEMBER MATEO: Will comply.

7 CHAIR MOLINA: -- applicant will comply.

8 COUNCILMEMBER MATEO: Yes.

9 CHAIR MOLINA: Much like that of the housing policy,
10 along those lines. Okay. Okay.

11 COUNCILMEMBER MATEO: Yeah.

12 CHAIR MOLINA: Okay, Member Anderson.

13 COUNCILMEMBER ANDERSON: Yeah, the only problem with
14 that is that the bill itself requires this to
15 be done at the subdivision at construction
16 plan review, prior to construction plan
17 review. And what we've been asking for is
18 prior to Phase II approval, and that is still
19 within, you know, the zoning parameters.
20 After -- if he gets approved through this
21 body, he gets Phase I approval, then he goes
22 to the Planning Commission and applies for
23 Phase II approval. So he's saying here Phase
24 II concurrent with the -- let's see, for any
25 Phase II application for Project District 9.

1 Let me ask you, Mr. Jencks, are you
2 saying that you're going to ask for Phase II
3 approvals in phases, in segments, let's say?

4 MR. JENCKS: We called them segments in a prior
5 meeting. Yes, I expect to do a number of
6 Phase II applications, and the idea here is we
7 have to demonstrate as a part of this process,
8 and your bill, that we would be demonstrating
9 that we have infrastructure, including water
10 concurrent with development, which is
11 basically what the Community Plan says. So
12 we've got to demonstrate concurrently with our
13 applications that we've got the source and
14 we've got the water.

15 COUNCILMEMBER ANDERSON: Okay. So you would be
16 willing to comply with the Show Me the Water
17 Bill at the application for a Phase II
18 approval?

19 MR. JENCKS: Absolutely. I mean, otherwise I won't
20 be able to go anywhere. And I may add, the
21 reference to engineering report for new
22 drinking water sources for regulated public
23 water system, that's directly -- that's the
24 report that you -- you were kind enough to
25 attach to your recommended condition, that's

1 the actual State verbiage. So that's exactly
2 what we have to provide to the State of
3 Hawaii. That's how they identify it.

4 COUNCILMEMBER ANDERSON: Okay. And in complying
5 with our bill, that has to be sent to our
6 Director of Water Supply for his review and
7 verification that you have a reliable source.
8 And as long as Mr. Jencks is willing to do
9 that with each Phase II approval, then I
10 concur.

11 MR. JENCKS: I think that's the way to go.

12 CHAIR MOLINA: Would you like to propose some
13 additional language to make it more specific,
14 Members?

15 COUNCILMEMBER ANDERSON: Right off the top of my
16 head?

17 CHAIR MOLINA: Okay. Well, we can come back to
18 it --

19 COUNCILMEMBER ANDERSON: Yeah.

20 CHAIR MOLINA: -- at one point if you work with
21 Staff.

22 COUNCILMEMBER ANDERSON: I will work on it right
23 now, but I can't think and talk at the same
24 time.

25 CHAIR MOLINA: Okay. While you're working on that,

1 Chair recognizes Member Johnson.

2 COUNCILMEMBER JOHNSON: Yes. And it's my
3 understanding this is in addition to all of
4 the --

5 CHAIR MOLINA: Yes.

6 COUNCILMEMBER JOHNSON: -- where we already took the
7 consensus under number one --

8 CHAIR MOLINA: One, that's correct.

9 COUNCILMEMBER JOHNSON: -- under the final column?

10 CHAIR MOLINA: I believe this would be added as a
11 separate condition.

12 Mr. Jencks, was that the intent, as a
13 separate condition, or do we attach to
14 Condition 1?

15 MR. JENCKS: My proposal was to replace what you put
16 in the second paragraph in the far right with
17 what you're doing and making as a matter of
18 law in Maui County. That was my -- that was
19 my thought process.

20 CHAIR MOLINA: So, Members, the second large
21 paragraph under the last column would be
22 replaced by Mr. Jencks' consideration, and
23 with additional language strengthened by
24 Member Anderson to I guess seek compliance
25 with the bill should it pass regarding the

1 Show Me the Water.

2 MR. JENCKS: I think that bill does pretty much what
3 you're asking for here. I mean, it's a
4 good --

5 CHAIR MOLINA: Right in that second paragraph?

6 MR. JENCKS: Yeah.

7 CHAIR MOLINA: Okay. Member Johnson.

8 COUNCILMEMBER ANDERSON: Not exactly.

9 COUNCILMEMBER JOHNSON: May I ask Member Anderson,
10 because in -- in the second paragraph on
11 Condition 1 in the final column, you know,
12 it's very detailed with regard to the site.
13 And because the Show Me the Water Bill is not
14 quite so site specific, I just want to ask
15 Member Anderson if all of the components in
16 this site-specific condition also exist in her
17 current water bill? And, you know, that's my
18 only concern, is because what we're drafting
19 is basically something that goes along with
20 the zoning and the site. And because we have
21 impaired near shore waters, my -- my biggest
22 concern is that additional protections may be
23 needed for this specific area that are not
24 contained within the existing water bill. And
25 I just want to make certain that none of those

1 components are taken out. So if Member
2 Anderson could address that.

3 CHAIR MOLINA: Member Anderson, are you able to
4 answer Member Johnson's --

5 COUNCILMEMBER ANDERSON: Sure.

6 CHAIR MOLINA: -- inquiry?

7 COUNCILMEMBER ANDERSON: She brings up a very good
8 point, Mr. Chairman, because the condition
9 that I had proposed looks at the project as a
10 whole, the whole 670 acres, the whole 2
11 million gallons of potable water that they're
12 going to need to build out this project. And
13 what Mr. Jencks is proposing is that he only
14 needs to get approval for water, reliable
15 water for each subdivision that he might
16 develop within this 670 acres, each phase as
17 he goes along. And as he's told us before, he
18 intends to build 100 units per year. So that
19 means, I guess, he would do an engineering
20 report for each 100 units and get it approved,
21 but that engineering report does not look at
22 the overall impact that we were talking about
23 regarding whether or not he's going to have a
24 backup well, an adequate backup well for the
25 whole project.

1 I mean, I would think he would want to
2 know this, that he has enough water to do the
3 whole project. Because upfront he's going to
4 be putting in large amounts of investment in
5 the infrastructure. But the way he's got this
6 condition written, he's only having to show a
7 reliable long-term supply of water for each
8 phase -- or each segment of the subdivisions
9 that he will be doing within this project, in
10 other words, 100 units per year. That's going
11 to be pretty easy to use probably with just
12 the wells he has right now without having to
13 do a desalination plant for maybe the first
14 couple suggestions. But when you get into it,
15 the way this condition he's written reads is
16 not going to give us an analysis of the
17 desalination plant or the disposal method for
18 the wastewater or what the effects will have
19 on down-gradient wells.

20 You know, pumping water for 100 units
21 may not have effects on down-gradient wells,
22 but if you have to pump enough water for 1,400
23 units, it could very well have an impact. And
24 I would think we would want to know that
25 upfront and the developers should know that

1 upfront, and our Department of Water Supply
2 would want to know that.

3 You know, as the plans for water for
4 this project have evolved at least four times
5 since the application was first submitted,
6 we're now looking at a proposal that has never
7 even be reviewed by our Department of Water
8 Supply or by DLNR as required in the
9 application requirements, Chairman. So I hope
10 that answers Ms. Johnson's question.

11 CHAIR MOLINA: Member Johnson.

12 COUNCILMEMBER JOHNSON: Yes, Mr. Chair. Because we
13 already agreed through consensus on this
14 second, very specific condition, I would
15 prefer to leave that in because of the
16 sensitivity of that particular area and
17 because of other problems that exist that are
18 site specific. I would rather have something
19 very clear, and as Corporation Counsel has
20 pointed out to us in the past, the more
21 specific we can be, the more clear we can be
22 about what our expectations are and what the
23 requirements are, the better off we are.

24 I think the very general wording of
25 Mr. Jencks' condition, there's room for

1 speculation and there's wiggle room. And I
2 think the way that this condition, which had a
3 great deal of thought and a great deal of work
4 that had gone into it, I would prefer that.
5 And while it may mirror in some respects the
6 water bill, this is site specific. And if
7 anyone reads this in the future, there will be
8 no question whatsoever as to who is required
9 to do what. That's the way I would prefer it.

10 And I think when Mr. Eng spoke before,
11 because he has not had this opportunity to go
12 through things, the more specific we can be as
13 a Council, the better off we will all be in
14 the long run, and future Councils or
15 Corporation Counsel won't have room to
16 interpret.

17 So I will not be supporting the
18 substitution. If it were in addition to that,
19 yes, but not substitution when we put this
20 much work into that wording. Thank you.

21 COUNCILMEMBER MATEO: Chairman.

22 CHAIR MOLINA: Okay, thank you, Member Johnson.

23 Mr. Mateo.

24 COUNCILMEMBER MATEO: Chairman, I didn't think we
25 were looking at his verbiage. I thought the

1 prior discussion was just to be specific and
2 indicate compliance with this proposed
3 ordinance should it pass. We weren't talking
4 about his verbiage. I think we understood
5 that we're not going to use his verbiage, and
6 we were going to it do an attachment. And if
7 possible we could even do an inclusion to the
8 recognition of that ordinance that comply, you
9 know, whether it be in various stages or not
10 or whatever the -- or whatever the process is
11 going to be. But I thought -- I don't know
12 what is any more specific than Ms. Anderson's
13 bill.

14 So, you know, we can do whatever we
15 want, but like we wasting time. We're not
16 dealing with this. We're dealing with what we
17 discussed. Do we go with attaching the
18 condition of compliance to this ordinance
19 or -- because Mr. Jencks' verbiage is not part
20 of the discussion at this point. That's out.
21 Thank you.

22 CHAIR MOLINA: Thank you, Mr. Mateo.

23 Members, any other comments? Of course
24 the Applicant is asking us to consider to
25 delete a portion of a condition that we

1 already passed. And the Chair had questions
2 procedurally, I guess if Staff or maybe
3 Corporation Counsel, if this body decides to
4 do that, to attempt to remove a portion of
5 that condition on something that was already
6 voted on, is there an issue where we need to
7 reconsider? I mean, I just want to make sure
8 if that's the direction that this body wants
9 to go, the Chair initially thought that this
10 would be a proposed attachment to the
11 condition or just as a totally separate
12 condition from the Applicant, but didn't
13 realize that, you know, basically you're
14 substituting -- you're taking a condition that
15 was already passed and, you know, in essence
16 amending it by substituting, you know, the
17 Applicant's verbiage with that -- that was
18 already agreed upon by the Committee.

19 Mr. Hopper, do you have any comments or
20 Planning Department?

21 MR. HOPPER: Well, as far as procedurally I don't
22 want to get into advising you on your own
23 rules. I think we've gotten --

24 CHAIR MOLINA: You mean parliamentary? Right.

25 MR. HOPPER: -- into problems with that in the past,

1 but if -- I mean, I know Robert's Rules of
2 Order does allow that, but I would defer to --
3 there would be a motion to adopt something
4 previously acted upon. I know it's in there,
5 but as far as your own rules and how you want
6 to proceed, I would defer.

7 COUNCILMEMBER VICTORINO: Mr. Chair, point of
8 clarification.

9 CHAIR MOLINA: Mr. Victorino.

10 COUNCILMEMBER VICTORINO: You know, we've -- and,
11 again, that was one of the questions I was
12 going to bring up at a certain point. For
13 clarification, you said on this consensus or
14 voted on, and I wish there was some way we
15 knew what was voted on and what consensus was.
16 Not to say that consensus isn't good, but I
17 think consensus is not voting on. If you want
18 us -- and that's a suggestion I would make.
19 I'd like to see us -- whatever we had
20 consensus on, vote on so that is done and
21 over. We not going back and rehashing it
22 again. Because once we vote on something, now
23 we have to amend that vote. We have to
24 change, okay. Consensus was we all agreed
25 upon, but, you know, now somebody may decide

1 not to agree on it.

2 So I think we're -- like Mr. Mateo said,
3 we're kind of rehashing what -- wasting time
4 on something. What I'd like us to do right
5 now is to, A, if this has been only consensus,
6 then what is the Chair's prerogative? Do you
7 want to incorporate it with this? Amend it?
8 Attach it? Whatever. Because I think it's
9 clear we want most of this to stay there. I
10 don't think there's a point about removing
11 anything. I don't think that was a
12 discussion, but -- and then maybe getting to a
13 point where all that's been voted on, we voted
14 on. Those that are consensus, let's go back
15 to them and say, okay, this is what we have
16 consensus on. Do you want it or not? Yea or
17 nay? Vote on it so we can move along.

18 Because, again, time is running, and I
19 think all of us in this room are most anxious
20 to get to the important points that haven't
21 been decided on and working those and
22 resolving those so that we can come to some
23 resolution. But this inconsistency or this
24 what I call consensus or voted on makes it
25 real difficult to understand where we're at on

1 certain conditions as far as what has been
2 presented on this last matrix dated 11/6/07.

3 I'm sorry, Mr. Chair, I just feel that
4 that's where we are at right now, and I
5 apologize if I'm the only one in the room that
6 feels that way.

7 CHAIR MOLINA: No, no apology --

8 MS. NAKATA: Chair.

9 CHAIR MOLINA: -- necessary.

10 MS. NAKATA: Oh, Mr. Chair.

11 CHAIR MOLINA: I -- hang on, Staff, let me just
12 state first that I wouldn't describe it as an
13 inconsistency. Again, it's driven by the
14 body, what you guys want. I mean, if the time
15 consensus was discussed, any Member could have
16 said, you know, Mr. Chair, let's vote on it.
17 So I'm just going by what, you know, you guys
18 feel comfortable with. So it's not only --
19 the Chair just makes a recommendation
20 ultimately. It's the body that decides if
21 they want to move something by consensus or
22 vote on the conditions. I just want to make
23 that perfectly clear.

24 Staff.

25 MS. NAKATA: Mr. Chair, if Staff could just clarify,

1 whether or not the Committee reached a
2 consensus or took a vote on the particular
3 condition is set forth in the first column on
4 the Members' matrix. So Staff tried to
5 memorialize under the heading status whether
6 there was a vote taken on that particular
7 condition or consensus reached.

8 The heading on the right-most column is
9 simply for convenience so that two separate
10 columns didn't need to be created, but that is
11 the current status of the wording in the
12 right-most column. So, again, on Condition 1
13 there was consensus reached on October 22nd.

14 If Staff could further clarify that the
15 proposed conditions that were submitted by
16 Mr. Jencks on October 31st, rather than
17 editorialize and pick and choose which ones
18 were to be included in a matrix, Staff simply
19 included them all. So, for instance, this
20 10/31 language was submitted subsequent to the
21 Committee reaching consensus on October 22nd.

22 CHAIR MOLINA: Okay, Members, we all clear as to how
23 we got to this point? Member Anderson.

24 COUNCILMEMBER ANDERSON: Mr. Chair, I move to
25 approve the Condition 1 as stated in the last

1 column.

2 COUNCILMEMBER JOHNSON: Second.

3 CHAIR MOLINA: Okay, it's been moved by Member
4 Anderson and seconded by Member Johnson to
5 accept Condition 1 as worded in the last
6 column.

7 Any discussion? Member Anderson.

8 COUNCILMEMBER ANDERSON: Yeah, Mr. Chair, first of
9 all, I would like to thank Mr. Victorino and
10 also Mr. Mateo for kind of focusing us back
11 here, because I guess I was confused. I
12 thought you asked me to reword Mr. Jencks'
13 proposal, which I just saw for the first time
14 today, and that confused me a lot. But I
15 think that we did have consensus on this, and
16 the condition as written actually mirrors the
17 bill that we have, the water availability
18 bill. It calls out for a licensed hydrologist
19 to do a report. It's basically the same thing
20 as our water availability bill.

21 The only thing that it adds is that
22 we're asking him to do this for the whole
23 project. We're asking us -- asking him to
24 give us an impact on the down-gradient wells,
25 which the engineering report may not do, and

1 we're also asking him in the wetlands, which I
2 think wetlands in near shore waters are very
3 important because we're dealing with impaired
4 waters along this shoreline already.

5 And it also requires that he do this
6 prior to Phase II so that the Council has a
7 chance to look at this should the source turn
8 out to be unreliable, he can't go on to Phase
9 II or Phase III approval until a new source is
10 obtained.

11 I would mention -- and the report has to
12 be submitted to the Council so that we know
13 what's happened. The water availability bill
14 does not allow for any of that to happen. So
15 this includes what is required in the water
16 availability bill, but it takes it a few steps
17 beyond that because we are dealing with such a
18 large project and a 20-year build out.

19 So I hope Members could maintain their
20 support for this condition. I think it's in
21 the best interest of the surrounding property
22 owners, best interest in our fiduciary
23 responsibility to our community, and in best
24 interest to the developer in the long term.

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

1 Any other discussion on Condition 1?

2 Member Johnson.

3 COUNCILMEMBER JOHNSON: Yes, and I do support this,
4 and I think that because -- what I've been
5 watching, anyway, and Member Anderson can
6 correct me if I'm wrong, but basically the
7 bill that's being sent forward in -- from the
8 Water Committee addresses the issue at the
9 subdivision level. There's a further
10 component, and because it impacted zoning,
11 that part will probably have to take a
12 different pass and may take longer, and
13 there's no assurance that that will pass in
14 its entirety.

15 So this is, I see, a safeguard that
16 irrespective of anything else, this is a
17 condition that we have full authority to apply
18 at zoning, not in, I guess, anticipation that
19 the second part of the Show Me the Water Bill
20 will actually be implemented or even enacted.
21 So this is our opportunity, and I think we
22 should take full advantage of it, because we
23 will not get it again. Thank you.

24 CHAIR MOLINA: Okay, thank you, Member Johnson. So,
25 Members, right -- sorry, Mr. Mateo.

1 COUNCILMEMBER MATEO: Chairman, thank you very much.
2 Chairman, my effort was I guess for a couple
3 of reasons. The first reason was to validate
4 what our Committee -- the Water Resources
5 Committee had done with this -- with the bill,
6 and if in fact, you know, we can see some
7 issues right now that we need to address,
8 then, you know, I think it was a good -- good
9 process, but, you know, when we reference an
10 ordinance, that ordinance should be specific
11 enough to address what we're looking at in
12 Condition 1.

13 I will support Ms. Anderson's
14 recommendation at this point. I would have
15 loved to have seen -- to validate our actions
16 in that ordinance to have just included, "must
17 comply with." That, to me, is specific
18 enough. And I don't know how you can finagle
19 your way out of an ordinance that is specific,
20 so if we wish to go this way, then, you know,
21 I will support -- I will support Member
22 Anderson's recommendation, but I just thought
23 it was a lot easier to deal specifically with
24 an ordinance, but I think at this point, then,
25 I'm hoping for future work on the ordinance.

1 Thank you.

2 CHAIR MOLINA: Thank you, Mr. Mateo. The Chair
3 agrees with you. I think you brought up some
4 good points. I mean, you can't make it any
5 easier, just refer to an ordinance, whether
6 it's pending or not, but at least there's
7 clear direction for the developer that they
8 must comply with an ordinance, finished or --
9 hopefully finished and approved. So I think
10 the discussion was healthy on this, and that
11 is why the Chair brought this matter out for
12 discussion.

13 Again, it's something that's driven by
14 all of us, not just one person, and I felt it
15 was my duty and responsibility to bring out
16 the discussion. And my apologies if it
17 confused anybody, but it is what it is. It's
18 a proposal from the Applicant. If we as a
19 body is not comfortable with it, then so be
20 it. So the Chair is willing to go again with
21 the majority of the body on this. If you want
22 to include Mr. Jencks' recommendation or not,
23 delete it, or maybe even amend what we have on
24 the floor right now.

25 So at this point the Chair is awaiting

1 break, from the Applicant. Tell you what,
2 Members, I think you look a little tired.
3 Let's take a -- let's take ten.

4 COUNCILMEMBER ANDERSON: Thank you.

5 CHAIR MOLINA: Take a break at 11:30. I just saw
6 Member Anderson's face. That kind of gave
7 me -- meeting in recess till 11:30. (Gavel).

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

9 **RECONVENE: 11:35 a.m.**

10 CHAIR MOLINA: (Gavel). The recessed Land Use
11 Committee meeting of October 18th, 2007 is now
12 back in session. It is 11:35 on Wednesday,
13 November 7th.

14 Members, we're going to go back to
15 Condition 13, related to OHA's involvement in
16 this matter. We do have the honorable retired
17 Judge Mossman, who is currently serving as our
18 Maui OHA representative, and, Staff, do we
19 have the Judge online currently right now via
20 speaker phone? I think Staff needs a few more
21 moments to prepare.

22 At this time, Members, I would ask that
23 if you have any questions -- Judge Mossman is
24 in the process of getting off island, so we're
25 very fortunate to catch him at a time before

1 he leaves. So once we have the honorable --

2 MS. NAKATA: Mr. Chair, Judge Mossman is on line.

3 CHAIR MOLINA: Okay.

4 **Note: Mr. Mossman participated in the meeting via**
5 **telephone conference.**

6 MS. NAKATA: Judge Mossman, can you hear us?

7 MR. MOSSMAN: Yeah, yeah, I can hear.

8 CHAIR MOLINA: Okay, Members, can you hear retired
9 Judge Mossman?

10 Staff, can we put the microphone closer
11 to the phone, if possible. Mr. Victorino is
12 having a difficult time hearing. Okay.

13 Hello, Judge Mossman, can you hear us?

14 MR. MOSSMAN: Yes, I sure can.

15 CHAIR MOLINA: Okay. Good morning. And thank you
16 for joining us on such short notice.

17 MR. MOSSMAN: I'm sorry I couldn't be there. I
18 didn't know anything about this. I was on the
19 mainland until last night, and I got the call
20 from Carla just a little while ago, so anyway,
21 I'd be happy to --

22 CHAIR MOLINA: Okay, thank you very much.

23 MR. MOSSMAN: -- answer whatever questions you have.

24 CHAIR MOLINA: Thank you very much, Judge Mossman.

25 One of our Members, Councilmember Medeiros,

1 had some questions related to the issue
2 itself, centering on OHA's involvement in this
3 project. I believe it had something to do
4 with a letter sent to us from the OHA
5 administrator Mr. Namuo.

6 Mr. Medeiros, do you have any questions
7 for Judge Mossman at this time for
8 clarification?

9 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman, and
10 good morning, Judge Mossman.

11 MR. MOSSMAN: Aloha, Bill.

12 COUNCILMEMBER MEDEIROS: Aloha. Thank you for
13 joining us. We were -- I'm sure you know
14 we're discussing the project Honua`ula, or
15 otherwise known as Wailea 670.

16 MR. MOSSMAN: Right.

17 COUNCILMEMBER MEDEIROS: Do you know that we're
18 doing that? Okay. And then we were also
19 discussing a letter that was received from a
20 Mr. Clyde Namuo, which is the administrator
21 for Office of Hawaiian Affairs. And it seems
22 like the content it -- contents of the letter
23 kind of gave an impression to some of the
24 Members when reading it that it was taking a
25 position for OHA, and we wasn't sure it was

1 just Mr. Namuo's position as the administrator
2 of what he wrote or it was indeed a position
3 that the entire board of the Office of
4 Hawaiian Affairs took. Do you know of this
5 letter, Judge Mossman?

6 MR. MOSSMAN: Yeah, yeah. I received it after it
7 was sent. Somebody left it on my desk and I
8 was able to see it. So that letter is one of
9 maybe, oh, I am told close to a thousand
10 letters that we send out each year in response
11 to requests from different individuals,
12 organizations, developers, counties, State, et
13 cetera. That letter is always done by our
14 administrative staff. The board does not get
15 involved in this -- at least at this level.
16 The five years that I've been at OHA, I don't
17 recall one situation coming up where we had to
18 take a position or did take a position on
19 issues such as this.

20 But this one is -- basically the reason
21 for the letter is to establish that OHA has a
22 legal mandate under the law to accomplish
23 certain steps whenever it comes to cultural
24 preservation. We, however, need to rely on
25 the State Historical Preservation Division to

1 notify us of -- of the projects, notify us of
2 the results, notify us of a number of
3 requirements under the law. So that's what
4 this letter is all about.

5 Essentially what -- when the letter was
6 written, we had nothing, you know. There was
7 nothing to comment on because we had nothing.
8 Since that time, Mr. Jencks has submitted to
9 OHA, I believe, additional information, and we
10 are currently working on that right now. The
11 difficulty, however, has been that the State
12 has not complied with their mandate under the
13 law, and so it's difficult for us to come out
14 with any conclusive decisions anywhere,
15 whether it be staff or board without the
16 adequate information.

17 So we're working on it, and regardless
18 of what the Council does or doesn't do, we
19 will ultimately be discussing this matter
20 further with the State as well as with the
21 County and with the developer, I'm pretty
22 sure.

23 COUNCILMEMBER MEDEIROS: Mahalo, Judge Mossman, for
24 that clarification. My next question is as
25 part of protocol, do they normally include in

1 the drafting of such a letter to consult with
2 the representative -- the trustee representing
3 that particular island?

4 MR. MOSSMAN: No, no, they don't. In fact, like I
5 told you, I got this after it was sent and I
6 was curious what it was all about. So I
7 looked it up and talked to the people, and
8 that's when they told me that, hey, you know,
9 this is just a response that we do all the
10 time. This is something that our staff has to
11 do close to a thousand a year and we've never
12 sent to the trustees before, but they will
13 here after.

14 COUNCILMEMBER MEDEIROS: Okay. And then, finally,
15 we were informed this morning to expect a
16 letter from OHA that was supposed to be
17 somehow transmitted or delivered today, and
18 are you aware of that letter?

19 MR. MOSSMAN: Yes, I am. I was talking to our
20 administrator this morning. Like I said, I
21 just got in last night and getting briefed on
22 what happened when I was gone, and he did say
23 he had a letter that the staff had prepared
24 and we talked about it briefly and decided
25 that since we are not completed with -- we

1 don't have the complete information that we
2 need to have, that it best be not -- prudence
3 would dictate that we not send it.

4 COUNCILMEMBER MEDEIROS: Okay, well, thank you for
5 that update, because it was our impression
6 from our last contact with the Office of
7 Hawaiian Affairs that it was going to be
8 either transmitted or delivered today, but I
9 want to thank you for answering my questions.
10 I appreciate it, especially you coming back
11 from the mainland and being on the phone with
12 us this morning. But thank you very much, and
13 I'll turn it back over to the Chair of the
14 Committee.

15 Mahalo, Mr. Chairman.

16 CHAIR MOLINA: Thank you, Mr. Medeiros.

17 Mr. Mateo is one of the Members -- other
18 Members that had suggested that we get
19 Mr. Mossman -- Judge Mossman on the phone.
20 I'm going to recognize you first, and then
21 Member Johnson, followed by Member Victorino.

22 COUNCILMEMBER MATEO: Trustee Mossman, good morning.

23 MR. MOSSMAN: Aloha, Danny.

24 COUNCILMEMBER MATEO: Trustee, just wanted to follow
25 up on one of your comments about you had the

1 opportunity of talking to some people
2 regarding the Wailea 670 project. Are you,
3 Trustee, able to provide us your comments or
4 your perception of what you expect to come out
5 of a cultural study for this area?

6 MR. MOSSMAN: You know, no. I would say no, only
7 because -- well, if you're asking me from
8 personal, it's one thing. If you're asking me
9 from my role as an OHA trustee, I would say
10 no. I think that it's an issue that -- that
11 has become political. We at OHA have
12 beneficiaries on both sides of the fence, and
13 it's just that we need to be very careful
14 about what we say and what we do in the
15 public. And our board, like I say, up until
16 now in the time that I have been there, five
17 years, has not taken a position on issues such
18 as this. Not to say that it won't in the very
19 near future, because I suspect that in the
20 future -- near future, with the issue of
21 affordable housing and the fact that so many
22 of our Hawaiians are having to leave so
23 rapidly, that we're going to be necessarily
24 getting involved in these issues a lot more
25 and at a lot earlier date than we have ever in

1 the past.

2 COUNCILMEMBER MATEO: Uh-huh, no, Trustee, thank
3 you. Because I do know that -- well, as you
4 mentioned, OHA had not taken a position on
5 development projects such as this for the last
6 five years. However, OHA did take a position
7 relative to Molokai in -- not in terms of the
8 development project, but in terms of a plan
9 for that community. And my interest was --
10 and you are correct. Perhaps I am trying to
11 ask you or push you to provide us your own
12 opinions and comments, but we contacted you as
13 the OHA representative, so I guess thank you
14 very much for sharing whatever comments you
15 could with us this morning without
16 compromising your trusteeship. So thank you
17 very much, Trustee Mossman.

18 MR. MOSSMAN: You're welcome.

19 CHAIR MOLINA: Thank you, Mr. Mateo.

20 Before recognizing Member Johnson, Judge
21 Mossman, could you give us an indication of
22 what kind of time you have? I know you're on
23 somewhat of a short leash prior to your
24 flight.

25 MR. MOSSMAN: Yeah. No, my flight is at -- my

1 flight is at 1:30, so I'm fine. I'm okay.

2 CHAIR MOLINA: Okay. We thank you for taking the
3 time to share your mana`o with us.

4 Member Johnson.

5 COUNCILMEMBER JOHNSON: Yes, Trustee Mossman, aloha.

6 MR. MOSSMAN: Aloha, Jo Anne.

7 COUNCILMEMBER JOHNSON: Thank you so much for making
8 yourself available. One of the challenges
9 that we have, of course, underneath the County
10 Code is that we must have from the Applicant
11 certain conditions that are met. And as part
12 of the application, one of these conditions or
13 one of the components is to have their plan
14 for preservation and identification of the
15 archeological resources fully prepared and, of
16 course, signed off on by yourselves,
17 Department of Land and Natural Resources, and
18 I believe the -- there's one other agency,
19 SHPD. So anyway, having, I guess, the
20 challenge of looking at their application and,
21 in my view, not having this particular
22 component of that application being complete,
23 Member Anderson has basically crafted a
24 condition that would preserve, you know, I
25 think it's slightly over a hundred acres,

1 which is the subject of this controversy. And
2 in doing so, it would give adequate time for
3 your trustees as well as other agencies to
4 complete their work as far as uncovering the
5 historical and the cultural features in this
6 area. It would also preserve some of the
7 areas of wiliwili forest that were mentioned
8 in Mr. Namuo's letter.

9 So because we're dealing with the time
10 clock, my personal feeling would be that to
11 always err on the side of caution, and yet to
12 allow the process, if it's going to move
13 forward, that we come up with a compromise
14 plan. And I think that that would be
15 preserving that whole entire area.

16 Do you have any thoughts on that kind of
17 approach, given that we don't have the
18 complete requirement met by the Applicant?

19 MR. MOSSMAN: Yeah, well, my thought simply is -- in
20 the nature of compromise, I'm always in favor
21 of compromise, that is not a necessarily bad
22 idea. Practically speaking, however, I'm not
23 sure if a hundred acres is situated in a
24 particular place or location. I mean, it
25 might be in the wrong location for all we

1 know. We may want -- there may be a need in
2 another location somewhere else that you need
3 to preserve. So practically speaking, I think
4 it's a little bit difficult if you have a
5 specific location you're talking about, which
6 I presume you do.

7 And so those are my only thoughts, is
8 that it's a good idea, but -- but trying to
9 actually get it working is another very
10 difficult thing to do. And in the end it may
11 be not as good an idea, if indeed the land
12 that you preserved is not the proper land.

13 COUNCILMEMBER JOHNSON: And I know because you don't
14 have the information in front of you, the
15 majority of the sites that were identified
16 through Mr. Aki Sinoto -- and we have the
17 benefit of having a map in front of us, which
18 you don't have -- almost every one, with the
19 exception of possibly two small areas, are
20 contained within that entire site that Member
21 Anderson has proposed for conservation. I
22 agree with you that because you don't have the
23 benefit of having the whole plan, it makes it
24 very difficult.

25 The other question, Trustee Mossman, is

1 because the Applicant proposes a golf course
2 meandering through archeological sites -- and
3 of course we have the issue of access to
4 burials, possible burial sites, or educational
5 purposes, my personal view is that a golf
6 course and kupuna do not necessarily mix.
7 Because I'm looking at safety, I'm looking at
8 the greatest degree of access.

9 So have you had any experience in the
10 past with golf course features, I guess,
11 meandering through archeological sites, and do
12 you think that this is appropriate?

13 MR. MOSSMAN: Well, I don't have -- I live near a
14 golf course, but I don't know of any
15 archeological sites up here to my knowledge,
16 but I have seen archeological sites in
17 developments, condominium/townhouse type
18 developments, and I'm not impressed with the
19 way they, you know, build around buildings, so
20 many giant tall buildings around these things.
21 I would think that in a golf course atmosphere
22 it's much more natural than it would be within
23 housing or other development.

24 COUNCILMEMBER JOHNSON: Thank you very much. Aloha.

25 CHAIR MOLINA: Thank you, Councilmember Johnson.

1 MR. MOSSMAN: Thank you.

2 CHAIR MOLINA: Mr. Victorino, you have a question,
3 and then after that we have Ms. Anderson with
4 a question for Judge Mossman, the Maui OHA
5 Trustee.

6 Mr. Victorino, you have the floor.

7 COUNCILMEMBER VICTORINO: Yes. Thank you. And
8 thank you, Trustee Mossman, for sharing your
9 mana`o with us. It's been a very enlightening
10 situation.

11 My question was -- first of all, I think
12 you answered it when you mentioned that from
13 here on in you and the trustees and others
14 will take an earlier look at these kinds of
15 cultural plans and some of the issues that are
16 occurring, because I think sometimes when you
17 get down to this phase where we're trying to
18 make approvals on things that, you know, are
19 not done or somebody's other side is saying it
20 is done and you're very confused, makes it
21 extremely difficult to make a decision.

22 But in your -- your take of all of these
23 preserves that -- or culturally preserved
24 sites, OHA is basically being aggressive in
25 how they mandate preserving these? Are you

1 really taking a real strong cultural as well
2 as a historic perspective on these sites?

3 MR. MOSSMAN: I would say so. It's not really
4 apparent because many -- like I said, of a
5 thousand requests, I mean, a lot of them are
6 just small little tiny, tiny subdivisions
7 where you don't hear anything about them.
8 This one is a more unusual and highly public
9 one, and if it's -- you know, everybody can
10 see what's going on. We -- we -- our staff is
11 mandated to comply with the law. That's all
12 we do, and that's all they feel that they have
13 to do. And so I don't hold anything back from
14 them on that. If they need to enforce the
15 law, they've got to enforce the law.

16 When it comes to discretionary type
17 decisions, then they may need to come, you
18 know, get some sort of board guidance, but if
19 we are indeed to get involved in the future
20 with more development, the reason I say I
21 think we will is OHA up until now has not had
22 a real strong, if any, what should I say,
23 visibility in affordable housing. So if we
24 were, let's say, to get involved in affordable
25 housing, we would want -- we would want to

1 make sure that any development that we get
2 involved in would be in compliance with all of
3 our cultural desires. And we would want to
4 work with the developer and with the State and
5 the County to ensure that so that we can get
6 our housing, and also comply with whatever the
7 laws require. And when it comes to
8 discretion, the board, then, would be making
9 policy on these issues, which we don't.

10 COUNCILMEMBER VICTORINO: Okay, thank you.

11 MR. MOSSMAN: I hope that's not -- I hope that
12 answers your question.

13 COUNCILMEMBER VICTORINO: Yes. Thank you. I
14 appreciate it. And the last question I had
15 for you, and just wanted this clarified, you
16 are stating that through conversation this
17 morning that we are not to expect a letter
18 from the office, the field office from
19 Mr. Namuo? We're not to expect any letter
20 today? Because, again, like a Member
21 mentioned earlier, I think Member Medeiros
22 mentioned earlier, that we were expecting this
23 letter, and that this letter was to help
24 clarify some issues, but you're saying after
25 speaking with them, you folks are not going to

1 forward a letter, not today anyhow?

2 MR. MOSSMAN: Correct.

3 COUNCILMEMBER VICTORINO: Okay, thank you.

4 Thank you, Mr. Chair.

5 CHAIR MOLINA: Thank you, Mr. Victorino.

6 Member Anderson.

7 COUNCILMEMBER ANDERSON: Thank you, Chairman.

8 Good afternoon, Trustee Mossman. Thank
9 you so much for making yourself available.

10 MR. MOSSMAN: You're very welcome.

11 COUNCILMEMBER ANDERSON: You know, we were told we
12 have a Maui OHA -- I don't know if
13 administrator is her title, but a member of
14 the staff of OHA from the Maui office was in
15 here this morning, and she said that the
16 letter would be forthcoming. She went back to
17 the office to make sure that it was sent. So
18 are you saying that -- because it was under
19 her -- her impression was that the letter was
20 being signed by the administrator on OHA and
21 was being faxed over.

22 MR. MOSSMAN: Right, and it's not going to be faxed
23 over.

24 COUNCILMEMBER ANDERSON: Okay.

25 MR. MOSSMAN: The reason for that -- let me tell

1 you. The initial letter indicates what our
2 concerns are, and that's basically it. Any
3 additional information would be pretty much
4 duplicative and not -- not yet founded upon
5 information that we have subsequently received
6 after the first letter. That's the problem.

7 COUNCILMEMBER ANDERSON: Great. I understand, and
8 thank you for that. Because the first letter
9 is what I wanted to focus my question on. And
10 the letter is basically a review letter of the
11 6E HRS preservation review process, and it's a
12 very well written letter. And the specific
13 concerns that OHA states regarding this
14 project is, one, OHA needs to be consulted on
15 the cultural review process. Two -- and I'll
16 read the whole thing. The Environmental
17 Council put forth excellent guidelines in the
18 preparation of a cultural impact study, and
19 these guidelines serve to ensure adequate
20 assessments are done with integrity in light
21 of statutory constitutional and judicial
22 mandates.

23 Two, OHA firmly believes that additional
24 inventory level, survey work needs to occur to
25 properly identify important and historic and

1 cultural sites, and that OHA needs to be
2 involved in the identification, significance,
3 assessments, and mitigation of these important
4 components of the traditional cultural
5 landscape of mauka and makai, and that relate
6 to the already established historically
7 significant Palauea area, and as they relate
8 to the exercise of constitutionally protected
9 traditionally and customary practices of
10 native Hawaiians.

11 Three, OHA would like additional Paleo-
12 botanical and Paleo-environmental study
13 performed due to the significance of this
14 area.

15 Four, OHA is very concerned with the
16 preservation of over a hundred acres of native
17 dry land forest, given our recognition of the
18 critical importance of these areas to the
19 overall well-being of the land and ecosystems.
20 The wiliwili devastation around the State is
21 another critical reason why preservation of
22 this environment is critical. OHA's
23 involvement with Wao Kele O Puna is a direct
24 result of our recognition of the importance of
25 the Hawaiian forest.

1 So my question, Trustee Mossman, is
2 would you support the comments that are made
3 here?

4 MR. MOSSMAN: The ones that you just read, yeah, I
5 would support those. I don't have a problem
6 with that. Like I say, this is in response to
7 a request. Now, the difficulty with all of
8 this is we -- we are a responding
9 organization. We don't go out and check all
10 these things out ourselves. We respond to
11 whatever the State Historic Preservation
12 Division informs us about. The problem with
13 this whole thing is that therein lies the
14 difficulty, is the State Historic Preservation
15 Division has not informed us in accordance
16 with the law. And that's why we're coming up
17 at the late -- this late stage saying what are
18 you talking about? We don't know this. We
19 don't know that. We don't know that. I don't
20 know what this -- what, five, 600 acres there.
21 For all I can see in our position is since we
22 have nothing -- never been informed about this
23 by that organization, we would be saying,
24 okay, let's start from square 1 and let's
25 start all over and go from acre by acre by

1 acre by acre and check the whole thing out
2 ourselves, and I don't think that's practical
3 either.

4 COUNCILMEMBER ANDERSON: No. Trustee Mossman,
5 the -- this review letter is in response to
6 SHPD's inventory survey reviews on this
7 project according to Chapter 6E. And the last
8 inventory survey review letter that SHPD
9 issued on this project was January 17th, 2002.
10 There has been no further documentation
11 submitted to SHPD or received from SHPD on
12 this project. And here we are almost five and
13 a half years later trying to make a final
14 decision. And so I think that's why it's so
15 important that we listen to the
16 recommendations from OHA. The last review
17 letter of January '02 was asking for exactly
18 what OHA is recommending here, additional
19 survey work, testing, as well as adequate
20 review by SHPD -- I mean by OHA. So this
21 letter says that they're awaiting revisions to
22 the second draft of their inventory survey.

23 So I thank you very much. If you had
24 any other comments you wanted to make in
25 regards to this letter, I would appreciate

1 hearing it.

2 MR. MOSSMAN: You know, I don't have that letter
3 with me. I kind of remember reading it. It's
4 quite long and lengthy. I do know much of it
5 is form and they customize it to the
6 particular development, but in this case I
7 know it's significant in the sense that we
8 have a lot -- you know, we have a -- what
9 should I say, a lack of information. That's
10 the problem. We have requested commentary.
11 We have requested information, and we have not
12 received it. So basically much of the
13 information has just been recently received,
14 and now we need to digest that. And as far as
15 I know, none of our staff has come out to even
16 see the project.

17 COUNCILMEMBER ANDERSON: And just one other thing,
18 Trustee Mossman. You know, we're concerned
19 because -- or at least I am, because the
20 inventory survey has not been approved yet by
21 State Historic, and that prevents us from
22 getting a preservation plan approved. And in
23 our Change in Zoning ordinance -- and I'm
24 reading this right out of the OHA letter, your
25 administrator quotes, the Maui County Change

1 in Zoning Ordinance specifically states that
2 the developer's application must include
3 preliminary, archeological, and historical
4 data and comments from the Department of Land
5 and Natural Resources and Office of Hawaiian
6 Affairs of the State, and, if applicable, a
7 preservation mitigation plan, which has been
8 reviewed and approved by the Department of
9 Land and Natural Resources and the Office of
10 Hawaiian Affairs. This lack of consultation
11 is troubling in light of the legal mandates
12 also requiring this consultation in historic
13 preservation law and rule.

14 And so that is why I'm concerned that,
15 you know, the review process has not moved
16 forward since 2002, except for, you know,
17 discussions that their consultant says he has
18 had with staff at SHPD, but as far as any kind
19 of documentation beyond the January 2002
20 letter, nothing has been forthcoming, and
21 certainly not a preservation mitigation plan,
22 which has allowed the state of -- the Office
23 of Hawaiian Affairs the opportunity to review
24 it, or for this Council.

25 MR. MOSSMAN: And I don't disagree with that.

1 COUNCILMEMBER ANDERSON: Thank you very much,
2 Trustee Mossman.

3 CHAIR MOLINA: Thank you, Member Anderson.

4 Thank you, Trustee Mossman. We have one
5 other Member.

6 Mr. Pontanilla, before we end our
7 session with Judge Mossman, do you have any
8 questions for Mr. Mossman?

9 VICE-CHAIR PONTANILLA: No, I don't have any
10 questions for Trustee Mossman, but thank you
11 for being on the line and answering all of the
12 questions that the various Members has asked.
13 Just to let you know, I was the individual
14 that wrote that letter to OHA for some
15 response, and the answer that was given by the
16 representative this morning was in regards to
17 that letter that was sent several days ago,
18 Judge, but, again, thank you very much.

19 MR. MOSSMAN: The other thing, I wasn't aware of
20 this either, and I would like to see what the
21 letter says also, so -- or what it was going
22 to say, but we'll see. It may come anyway.

23 VICE-CHAIR PONTANILLA: Thank you.

24 CHAIR MOLINA: Thank you, Mr. Pontanilla.

25 So being that OHA Trustee Mossman has a

1 flight to catch, Members, I'm going to cease
2 our conversation with him for now. I'd like
3 to thank you very much, Judge Mossman, for
4 being available to us on such very short
5 notice to address this matter.

6 MR. MOSSMAN: All right. You're very welcome.

7 Aloha.

8 CHAIR MOLINA: Aloha.

9 COUNCIL MEMBERS: Aloha.

10 CHAIR MOLINA: All right, Members, we've reached
11 that point of day where I want to give you
12 guys a chance to chew on a few things. We can
13 come back after the break and discuss as to
14 how we will proceed with the proposed
15 Condition 13. So we shall take our lunch
16 recess, and we shall reconvene at 1:30. This
17 Land Use Committee meeting is in recess until
18 1:30 p.m. here in the Chambers. (Gavel).

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

20 **RECONVENE: 1:38 p.m.**

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

24 Members, we are back to Condition 13.
25 The Chair would like to get a pulse feel from

1 the Members as to your comments regarding
2 Condition 13 and the possibility of taking
3 action, being that it looks like we may not
4 have any more than six people for the rest of
5 this afternoon and we are going to lose quorum
6 at 3:00 o'clock. Recommendations from the
7 body? The Chair is kind of looking at the
8 numbers, and I don't know if it may be -- may
9 work --

10 COUNCILMEMBER ANDERSON: Who do you expect, Chair?

11 CHAIR MOLINA: -- for the benefit of the body.

12 We're expecting Member Pontanilla and -- I
13 believe we were just told Member Hokama now
14 will not be attending. Okay. So Member
15 Hokama will not be here for the rest of the
16 day, and Member Victorino, Member Baisa,
17 they're both gone for the day, and it's just
18 basically us at this point. So no more than
19 six people. So what is the pleasure of the
20 body on Condition 13? I believe we've maxed
21 out on the discussion of it in items of --
22 shall we defer decision making on Condition
23 13, then, Members?

24 COUNCILMEMBER ANDERSON: I think so.

25 COUNCILMEMBER JOHNSON: It's important.

1 CHAIR MOLINA: Okay. All right. So we will defer
2 Condition 13 for another time for hopefully a
3 decision on that condition.

4 All right, Members, let's look now -- at
5 this point I would -- the Chair would like to
6 address some proposals from Member Johnson, a
7 document dated July 24th, 2007. And my
8 apologies to Member Johnson, we left off her
9 comments and suggestions off of the updated
10 matrix, so the Committee has provided for you
11 a copy of her July 24th correspondence to the
12 Committee with her recommendations and
13 suggestions. So I guess we'll go through them
14 one by one.

15 COUNCILMEMBER JOHNSON: And, Mr. Chair, what -- you
16 know, for I guess the sake of expediency, as
17 best we can, because I'm going to have to be
18 leaving at the latest between 2:15 and 2:30,
19 if we could take some of the conditions that
20 are less problematic --

21 CHAIR MOLINA: Sure.

22 COUNCILMEMBER JOHNSON: -- than others. I would
23 say -- and I haven't quite finished my
24 drafting of the wording in Condition Number 7,
25 but Condition Number 7, starting from the

1 back, basically was trying to mirror the
2 condition that we placed in the Haliimaile
3 subdivision or the Haliimaile project, and it
4 was Condition Number 17 in that Ordinance
5 Number 3312. And I would just -- because it's
6 going to require a little bit of wording, I
7 can have that wording prepared, Mr. Chair, by
8 the time we have the next meeting. Because
9 some of the conditions are a little bit
10 different, and we've also adopted the
11 residential workforce housing, so I want to
12 make sure to check that. So essentially what
13 it would do, though, is to provide a reporting
14 mechanism to both the Director of Housing and
15 Human Concerns, as well as the Council,
16 because oftentimes we don't know what the
17 ultimate sales price of these units are. We
18 don't know who they go to. A lot of times we
19 hear through the grapevine that they've
20 actually been sold because they've gone
21 through the various, I guess, time
22 limitations, which I think we've somewhat
23 addressed in the Workforce Housing Ordinance
24 now. But we want to make sure if our
25 affordable housing requirements or our

1 workforce housing requirements are being met,
2 the only way we know that is if we actually
3 have some kind of an update. And so that
4 would just be an attempt, Mr. Chair, to
5 replicate that particular condition.

6 CHAIR MOLINA: Okay, thank you, Member Johnson.

7 COUNCILMEMBER ANDERSON: Mr. Chair.

8 CHAIR MOLINA: So you'll be providing us some
9 additional --

10 COUNCILMEMBER JOHNSON: Yes.

11 CHAIR MOLINA: -- language for it?

12 Okay, Member Anderson, followed by
13 Member Pontanilla.

14 COUNCILMEMBER ANDERSON: If I could just help on
15 this, you know, the State Land Use Commission
16 requires an annual compliance report. Why
17 don't we just make a condition, an overall
18 condition asking for an annual compliance
19 report on all conditions imposed on the
20 project, and that way we'd have an update on
21 the status of every condition, including the
22 affordable housing condition.

23 CHAIR MOLINA: Okay, Members, you heard the
24 consideration. What is the body's feel on
25 this? Should we take a formal vote or shall

1 we go consensus on this, Members? Member
2 Johnson, as the --
3 COUNCILMEMBER JOHNSON: Mr. Chair, and --
4 CHAIR MOLINA: -- subject matter person.
5 COUNCILMEMBER JOHNSON: -- I will give you the
6 wording, because, again, because the wording
7 was so specific, I tried to on each zoning
8 request that we had, I tried to incorporate --
9 but this is -- this is generally, you know,
10 and I have it sort of roughed out, the
11 condition would read that WCPT/GW Land
12 Associates LLC, its successors, and permitted
13 assigns, shall provide annual status reports
14 to the Director of Housing and Human Concerns
15 and the Council commencing within two years
16 following the effective date of the Change in
17 Zoning and ending upon completion of all
18 residential workforce housing requirements.
19 The status shall include, A, the number of
20 affordable units and market-priced units
21 complete; B, the number of affordable units
22 and market-priced units sold; C, for each
23 unit, the sales price, square footage, number
24 of bedrooms and baths, and lot size; D, the
25 income bracket for each purchaser of an

1 affordable unit.

2 And then because this is the part that's
3 not really applicable to them, we did have a
4 requirement that A&B had, because they said
5 some of these units were going to go to their
6 employees, we may just want to do away with
7 that number E entirely. And then because I
8 haven't fact checked this, the number of units
9 sold to individuals who are not qualified
10 residents as defined, and at that time it was
11 a housing agreement. So I'd have to -- I'd
12 have to research on F.

13 And then G would be probably still
14 remaining in the number of units offered for
15 resale and the number of units sold on the
16 resale market, if any. And H, any buyback
17 provisions, owner occupancy requirements, or
18 ohana unit restrictions that apply.

19 So that was how we had drafted that
20 original condition, but the sections that I
21 kind of called out were those things that were
22 not applicable since we adopted the work --
23 the Residential Workforce Housing Bill, so we
24 may just not want to include those. But I
25 understand what Member Anderson's

1 recommending, but because this condition was
2 so specific about what should be contained
3 within the report, that's why I felt it was
4 important that -- I mean, if we do have an
5 omnibus condition that they shall comply with
6 all requirements, including the affordable
7 housing, I still want this. And if this
8 already is contained where we should have the
9 annual report, within the Residential
10 Workforce Housing Bill -- and I can't recall,
11 because I think we did not put it in because
12 it might not be applicable to everyone, that's
13 why I want to do a little more research on it.

14 And if Member Anderson understands where
15 I'm going with that.

16 COUNCILMEMBER ANDERSON: Yeah, sure.

17 COUNCILMEMBER JOHNSON: Okay. But if it's all right
18 with the Members, then I will bring this back
19 and I will do the proper research to see what
20 components, if any, are already contained
21 within our housing ordinance, and if it is
22 not, then I will amend the condition so that
23 it fits properly with this particular zoning
24 request.

25 CHAIR MOLINA: Okay, thank you, Member Johnson.

1 COUNCILMEMBER JOHNSON: Chair Molina, I think the
2 other thing -- and of course --

3 CHAIR MOLINA: Oh, hang on, Members. I think Member
4 Pontanilla had a question --

5 COUNCILMEMBER JOHNSON: Oh.

6 CHAIR MOLINA: -- related to your proposal.

7 COUNCILMEMBER JOHNSON: Certainly.

8 CHAIR MOLINA: Mr. Pontanilla.

9 VICE-CHAIR PONTANILLA: Yeah, thank you, Chair, and
10 thank you, Member Johnson, for bringing this
11 forward. I just have a question for the Chair
12 in regards to, you know, we've had a lot of
13 discussion in regards to the traffic issues,
14 also, you know, about personnel going to and
15 from the work site. I don't know if in our
16 matrix here we have included some of those
17 items?

18 CHAIR MOLINA: Are you making reference to one of
19 the conditions proposed by Member Johnson?

20 VICE-CHAIR PONTANILLA: I know we talked a lot
21 about --

22 COUNCILMEMBER JOHNSON: Three and four.

23 VICE-CHAIR PONTANILLA: Three and four, yeah.

24 CHAIR MOLINA: I can't -- let me see. We'd have to
25 go back, look at condition -- I don't seem to

1 recall if we've put those kinds of specific
2 conditions related to that as far as
3 construction traffic. Now, of course the body
4 could consider creating a separate condition
5 or conditions related to that. So, again, the
6 Chair's open to any additional conditions that
7 you may have. If that is something -- if you
8 would like to travel down that path, no pun
9 intended, Mr. Pontanilla, then I can -- we can
10 reference that, Member Johnson, your
11 proposed -- related to Member Pontanilla's
12 issue of construction traffic. I believe this
13 is Conditions 3 and 4. If you can -- for the
14 record, Member Johnson, if you can go ahead
15 and state --

16 COUNCILMEMBER JOHNSON: Yes.

17 CHAIR MOLINA: -- your proposals 3 and 4.

18 COUNCILMEMBER JOHNSON: And basically 3 and 4, they
19 were a result of my experience with
20 construction development in West Maui and the
21 tremendous challenges we had and how the
22 actual construction personnel want to park
23 right next to the work site, and yet there's
24 not enough parking. So every day they come in
25 from the -- well, in this case it would be

1 either Central or other parts of the island
2 and feed into West Maui, and so this was a
3 huge problem.

4 So basically Condition Number 3 would --
5 other than -- I'm looking at if it's a cement
6 truck, if it's a truck that's a flat bed
7 that's carrying rebar or construction
8 materials, that's not what I'm referring to.
9 I'm referring to specifically the personal
10 vehicles of those construction workers that
11 will be employed during the construction phase
12 of this project. And my condition would
13 require that the construction personnel, that
14 would mean just their workers, commute by
15 alternate transportation, such as park and
16 ride, Vanpool, carpool, shuttle service, or
17 public transit, rather than by their single
18 passenger vehicle, and that this would be a
19 condition that would limit the amount of
20 personal vehicular traffic into that area.

21 Because I think we're going to have
22 enough with all the construction trucks just
23 bringing materials, but when you compound that
24 with all of the workers, and if it's anything
25 like West Maui, they're coming from every part

1 of the island every day, and that just adds
2 tremendously to the loading, and of course the
3 level of service will drop down significantly,
4 because we go through that every day.

5 And then the other condition was more
6 specifically, that's Condition Number 4, all
7 roadway usage by construction trucks and heavy
8 equipment related to the subject development
9 be restricted to non-peak hours. That was one
10 of the requests, and I think there was also a
11 certain roadway, and I cannot recall,
12 Mr. Chair, if we included -- Maui Meadows was
13 concerned that one of -- well, actually, the
14 roads that run near or through their
15 subdivision not be used as shortcuts for
16 development traffic. And I can't recall
17 whether or not we specifically crafted a
18 condition to mitigate their concerns.

19 So if we didn't do that, I would suggest
20 that that language be added and incorporated
21 into that all roadway usage by construction
22 trucks and heavy equipment related to the
23 subject development be restricted to non-peak
24 hours. So that what you're doing is -- you
25 know, if they come early in the morning or

1 they come later in the afternoon, it may be
2 problematic, but what ends up happening is
3 most of this heavy equipment -- even if it's
4 during the lunch hour sometimes it's not so
5 bad. Because I think the worst time in the
6 morning is during commute time when people are
7 getting to work or to school, and then in I'd
8 say maybe from 3:00 to about 5:00, but I would
9 have to defer to someone else to define what
10 non-peak was, but if we could come close to
11 that.

12 And I know that all of that may not be
13 completely practical, but I really believe it
14 will eliminate a lot of the conflicts, and
15 particularly with some of the trucks. You
16 know, they're really not that careful and they
17 run a lot of lights. Because that's the
18 experience that we've been having in West Maui
19 is, you know, these double tandem trucks, they
20 are consistently running lights, and it's
21 during the worst part of the traffic in the
22 afternoon. And sometimes kids are getting out
23 of school or they're, you know, enjoying
24 recreational opportunities, so it's more of a
25 safety thing. And I'm open to any specific

1 wording, but I would definitely say that it's
2 worthy of consideration.

3 CHAIR MOLINA: Okay, thank you, Member Johnson. And
4 in terms of, you know, for example Condition
5 4, I would suggest maybe coming up with a
6 specific time on what is non-peak hours. And
7 then for Condition 3, you know, requiring
8 construction personnel to commute by alternate
9 transportation, I think one issue we need to
10 look at, the enforcement, you know, what
11 department will ensure that, you know, you
12 don't have all of these so-called private
13 vehicles and, you know, who makes the
14 determination. So I think those are some
15 matters that need to be looked into. But I
16 do -- you know, I can totally understand the
17 intent, you know, to minimize the amount of --

18 COUNCILMEMBER JOHNSON: No, and that's a point well
19 taken, and I think perhaps the enforceability
20 aspect of this particular condition, a lot of
21 it is going to be up to the construction
22 companies that are contracted to do this, and
23 I would ask that something be placed within
24 their construction contracts, because that's
25 what we had to do in West Maui, I think, when

1 the rebuilding of Kapalua Bay Hotel was
2 ongoing. Because it was a special management
3 area, they specifically required within the
4 contract for the construction companies --
5 whenever they contracted out they had a clause
6 specifically stating that you shall not use
7 this portion of the roadway, and that was
8 enforceable. And a few times I had to call or
9 other Members of the community had to call to
10 alert the developer what their own
11 construction company was doing. But it got
12 corrected very quickly, as long as people know
13 what the rules are.

14 CHAIR MOLINA: Thank you, Member Johnson.

15 Member Medeiros, followed by Member
16 Mateo.

17 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I
18 just have a question on Condition 3, and with
19 the Members that have long tenure on this body
20 maybe they will be able to answer it. Can you
21 really restrict someone from using their
22 personal vehicle to go to work? And the
23 reason I ask that is some people live in one
24 part of Maui and need to transport their child
25 to a private school or an exempted school

1 where they're going out of district to take
2 their child for some family reason, and then
3 you -- you put a condition where they no
4 longer can do that.

5 I was wondering if Corp. Counsel could
6 answer that, if we -- we have the authority or
7 the right to restrict people from using their
8 single passenger vehicles, which I assume is
9 their personal vehicle, to go to work?

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

11 That's a reasonable question to ask.

12 Mr. Hopper, are you able to respond to
13 Councilmember Medeiros' inquiry?

14 MR. HOPPER: I don't know offhand. I mean, I
15 understand what you're talking about as a
16 potential problem. I'm not sure what the
17 legal problem would be with that. You've got
18 two issues, one is any potential legal
19 problem; another is do you want to do it? I
20 mean, do you think it's fair to make people
21 carpool in those situations? You brought up
22 some good points.

23 But offhand, no, I can't answer -- I
24 don't know if it's been done before on other
25 similar projects. I can't answer that,

1 because I haven't honestly been here long
2 enough. And if it has, then presumably --
3 well, then we would have -- our office would
4 have looked at them and approved them as to
5 form and legality, so typically if it has been
6 on previous projects and there's some sort of
7 precedent for it, then we could look into
8 that, or crafting language like those past
9 projects. Maybe it's been adjusted in certain
10 ways. Maybe it's a condition, too, as much as
11 feasible, or something along those lines. But
12 as far as a requirement, I mean, you deal
13 with -- aside from any legal issues, you also
14 deal with enforcement, which I think that
15 would be a very difficult thing to enforce, to
16 make sure no one is coming to the project in
17 their own vehicle rather than, you know,
18 carpool, just sort of a practical concern.

19 So we would definitely need to work at
20 the wording of the condition, how it's worded.
21 And if there's a precedent for it, I think it
22 would be a very good idea to look at those
23 precedents and use some of the language there.
24 And perhaps you can come up with a condition
25 that's as much as feasible or something like

1 that, but -- so I'm not certain even if you
2 can require that, whether or not it's really
3 possible to enforce such a condition, that
4 that would -- I would recommend you consider
5 how, you know, one would go about enforcing
6 that condition.

7 COUNCILMEMBER MEDEIROS: Thank you, Mr. Hopper.

8 And, Mr. Chair, maybe with your tenure
9 on this body, has the Council done any kind of
10 conditions like that where you restrict the
11 use of a personal vehicle to go to work?

12 CHAIR MOLINA: You know, to my recollection,
13 Mr. Medeiros, I don't recall any type of
14 condition like that. Unless some of the other
15 Members can refresh my memory, but I don't
16 recall anything of that nature. Maybe there
17 was, but it's -- if there was, it's been a
18 while.

19 Member Johnson.

20 COUNCILMEMBER JOHNSON: Yeah, I think most of this
21 has come about in Special Management Areas
22 where there were specific conditions enforced,
23 and I think some of these are attached, like
24 to the North Beach construction. They said
25 they shall provide, you know, off-site parking

1 for -- there were still people that -- in fact
2 I had to complain, and finally, you know, that
3 part of the condition was actually enforced
4 where the people were parking on off-site
5 parking.

6 But basically there are conditions that
7 have definitely restricted the use of private
8 vehicles and have required the developer as a
9 condition of development to not create
10 negative impacts in an area. I mean, if you
11 have 400 people working on a work site and
12 every single one of them wants to bring their
13 private vehicle, that becomes a problem. So I
14 know that they did have difficult trying to
15 find off-site parking when North Beach was
16 under construction. I think the Intrawest,
17 also Kaanapali Ocean Resort, but they
18 eventually were able to find off-site parking.
19 And, you know, there may have been the
20 occasional offense, but they did -- they did
21 comply as best they could, and for some of the
22 people, I believe the way that they enforced
23 it was they basically got a notice posted on
24 their vehicle if it was parked in an area
25 where it was not supposed to be parked. And

1 unless they had extenuating circumstances, as
2 referred to by Member Medeiros, where they had
3 physicians appointment or something specific
4 that they had to deal with, they actually got
5 a notice. And if they got a second notice,
6 there was actually some type of a fine
7 assessed to them by the company itself. So, I
8 mean, they found a way to enforce it.

9 CHAIR MOLINA: Okay, thank you, Member Johnson.

10 Before the Chair recognizes Member

11 Mateo, I guess a quick question --

12 COUNCILMEMBER MEDEIROS: Mr. Chair, can I --

13 CHAIR MOLINA: Yes.

14 COUNCILMEMBER MEDEIROS: -- just finish?

15 CHAIR MOLINA: Go ahead.

16 COUNCILMEMBER MEDEIROS: Thank you, Mr. Chairman.

17 So I would suggest if we're going to
18 pursue this condition, that Corp. Counsel
19 indeed see if there's any precedents that were
20 made prior to this project, if it was done,
21 and how did they do it, and so forth. Because
22 there's many scenarios. You know, some people
23 take their cars to work because they may have
24 a child that may need for them to go back on
25 an emergency call to tend to their child or

1 pick them up from school and so forth.

2 So I have a hard time believing that you
3 can enforce not allowing somebody to use their
4 vehicle to go to work. I can see where, okay,
5 off-site parking is provided, and then they
6 can park there and shuttle to work, but then,
7 again, the company would have to provide
8 transportation for that person to go back to
9 their car should they be able to -- I mean,
10 should they need to leave work earlier than
11 the end of workday. So there seems to be a
12 lot that would have to be incorporated in a
13 condition like this to make it not only legal,
14 but to make it, you know, where there's some
15 humanity involved in what people need to do
16 with their families.

17 So I just, you know, bring that up for
18 consideration by you, Mr. Chairman and Corp.
19 Counsel if we pursue this condition. Thank
20 you, Mr. Chairman.

21 CHAIR MOLINA: Thank you, Mr. Medeiros. I think you
22 bring up some good points as well. And being
23 that you'll have a wide array of construction
24 workers on site, some will maybe have
25 different hours as well. So, you know,

1 there's a lot of factors to take into
2 consideration.

3 A quick question for Corp. Counsel
4 before I recognize Mr. Mateo, could we place a
5 condition to limit parking in the Project
6 District, I mean, based on this concern? You
7 know, I don't know how -- roughly how many
8 construction workers could be on the site at
9 one particular time. Is there any legality
10 with setting a limit on the amount of parking
11 available in the Project District?

12 MR. HOPPER: On parking during construction?

13 CHAIR MOLINA: Uh-huh, during that time, during
14 normal -- I guess so-called normal work hours
15 from whatever, 7:00 to 5:00, 7:00 to 4:00.

16 MR. HOPPER: I don't see anything illegal offhand
17 about -- about doing that. I'd like to see
18 the condition and give an opinion on it, but I
19 don't see -- I do not see a problem with that.

20 CHAIR MOLINA: Okay, thank you, Mr. Hopper.

21 Mr. Mateo.

22 COUNCILMEMBER MATEO: Chairman, I would like to ask
23 your indulgence if we could go back to
24 Ms. Anderson's [sic] first item, which was
25 Condition -- her Condition Number 7.

1 CHAIR MOLINA: Okay.

2 COUNCILMEMBER MATEO: And I just wanted to provide
3 information, that the current Residential
4 Workforce Housing Policy, 2.96.110, under
5 review, it requires the Department to provide
6 both for sale and ownership units. Section B
7 under that subsection indicates that it
8 includes an annual report by the Director of
9 the Department that will provide number of
10 units built for sale or rent categorized by
11 number of bedrooms, income groups, sale
12 price -- sale price, if for sale, requires the
13 number of purchasers who resold, it requires a
14 waiting list.

15 So virtually Ms. Johnson's interest or
16 concerns is already addressed in the current
17 policy, and the Applicant has agreed that he
18 will comply with, I guess, the 2.96. So I
19 believe Number 7, we can -- if it meets
20 Ms. Johnson's interest, then it already
21 exists.

22 CHAIR MOLINA: So basically we could just condense
23 that --

24 COUNCILMEMBER JOHNSON: Uh-huh.

25 CHAIR MOLINA: -- it will still carry that same

1 intent that you have, Member Johnson, and,
2 Mr. Mateo, with your suggestion, then?

3 COUNCILMEMBER MATEO: Well, because the Applicant
4 has already said that he will comply with
5 2.96, 2.96, this is a subsection in 2.96 that
6 comes with a yearly requirement.

7 CHAIR MOLINA: Okay. Member Johnson.

8 COUNCILMEMBER JOHNSON: Yes, may I? Because I know
9 what that section says. It's the Director of
10 Housing and Human Concerns that has to do the
11 report or it's the developer.

12 COUNCILMEMBER MATEO: It is the Director that shall
13 provide an annual report to the Council on the
14 status of housing policy that shall include,
15 and it lists.

16 COUNCILMEMBER JOHNSON: Okay, and I guess just for
17 further clarification and, I guess, this could
18 go to Mr. Hopper. If we utilize the language
19 that's currently in 2.96, if we do that and
20 it's the Director of Housing and Human
21 Concerns, what is the mechanism whereby the
22 developer will be compelled to provide that
23 information to the Director of Housing and
24 Human Concerns?

25 CHAIR MOLINA: Mr. Hopper.

1 MR. HOPPER: I'd have to read 2.96 at this point. I
2 could get it out and read it. I'm not
3 familiar with it cover to cover as much as the
4 Members. I haven't looked at as much, but, I
5 mean, that should be provided in the
6 ordinance. I'm not sure to what extent that
7 report would mirror your condition that you
8 proposed. It may or may not. I'm not sure if
9 it deals with all of the income ranges that
10 are required to be met, but it would make
11 sense to require the developer to provide that
12 information to the Housing Department and have
13 them then provide that information to you.

14 If it's going to involve the information
15 such as the income ranges for the people sold,
16 and which it, I would believe, should, because
17 those are, you know, percentage requirements
18 in order -- you know, for the developer to
19 comply with the ordinance as written, but I'm
20 not familiar with that offhand. But I can
21 take a look at 2.96 right now and see if I can
22 find the answer for you.

23 COUNCILMEMBER JOHNSON: I don't need the answer
24 right now, but I'm going to take another look
25 at that, and I thank Member Mateo for his

1 suggestion, because I'll review that and then
2 I'll look at it. And if I need to understand
3 how that information would be required to be
4 transmitted to the Director of Housing and
5 Human Concerns, then if that's satisfactory,
6 if there's somewhere in the ordinance that
7 there is a means of requiring the developer to
8 provide that information, that's the only
9 place they're going to be able to get it is
10 really from the developer. But just like
11 sometimes our water gallonage reports, you
12 know, they're theoretically required, but in
13 actuality, how many people really provide it?
14 So, you know, that's where I just -- I'll do
15 what I can, and if -- if I can't come up with
16 a mechanism to do that, then I'll just defer
17 probably to mentioning that condition.

18 Mr. Chair, there was a suggestion, and I
19 know it's on Number 3 and Number 4, but this
20 was a suggestion because Ms. Suyama had to
21 leave, and her suggestion is to -- that we
22 include language that a Transportation
23 Management Plan should be reviewed and
24 approved by the Department of Public Works and
25 County Department of Transportation in order

1 to reduce construction workers' traffic
2 generated by single passenger vehicles.

3 Upon approval, the contractors of the
4 project shall implement the transportation
5 management plan during construction
6 activities. An annual report shall be
7 submitted to Department of Public Works and
8 County Department of Transportation to
9 document the success of the TMP to meet its
10 benchmarks to reduce traffic during
11 construction of the project.

12 Now, that is a much more comprehensive
13 mechanism, but I think what it does -- and I
14 personally like her suggestion because there
15 are some practical challenges for enforcement,
16 and I think that because I'm not the traffic
17 expert, I would feel comfortable with that.
18 So what I can do is provide this language to
19 Staff and that can be used for consideration
20 for a condition, and that would replace Number
21 3 and Number 4.

22 CHAIR MOLINA: Okay, thank you for that
23 consideration, Member Johnson.

24 Mr. Pontanilla.

25 VICE-CHAIR PONTANILLA: Yeah, just a comment. Going

1 back to my Planning Commission days, we had
2 imposed a condition which is almost similar to
3 Condition Number 3 when they were doing some
4 construction out in Wailea. And because of
5 the community concern about traffic going up
6 and down on a particular roadway, we placed a
7 condition to have the developer look for a
8 site for employee parking, and then from the
9 employee parking they would shuttle their
10 employees to and from the work location. The
11 only -- the only thing -- we didn't restrict
12 individuals from bringing their own vehicles
13 to the work site or to some place where they
14 can park their car similar to what, you know,
15 Member Medeiros is ask -- you know, has told
16 this Committee, what if I want to go home at a
17 certain time or emergency or an appointment,
18 then that employee would have his vehicle, you
19 know, readily available.

20 So we had imposed a condition, having
21 the developer looking for a parking area so
22 that employees would park in the area rather
23 than, you know, congesting the roadways out in
24 Wailea.

25 CHAIR MOLINA: Okay, thank you. That's food for

1 thought, Mr. Pontanilla.

2 Member Anderson.

3 COUNCILMEMBER ANDERSON: Thank you, Chair. I think
4 maybe we might get some help here from the
5 developer.

6 CHAIR MOLINA: Sure.

7 COUNCILMEMBER ANDERSON: When -- back when I
8 proposed the condition about the Pi`ilani
9 Highway being widened prior to the start of
10 construction, I think we used grading permit.
11 Mr. Jencks was concerned that during the time
12 they would be developing the highway, if they
13 were restricted from doing any onsite work,
14 that would put them behind, way behind. And
15 that also the blue rock that they will be
16 removing from Pi`ilani Highway could be, then,
17 taken to their site and used on site.

18 And so at the time I asked him -- and
19 all these concerns that Ms. Johnson brings up
20 were the concerns that I addressed at that
21 point and asked him I would not be adverse to
22 them going ahead with some site work while
23 they're doing the widening, as long as they
24 could come up with a condition that would
25 prevent construction traffic from clogging the

1 highway, since it's now going to be a one-lane
2 highway while they're doing their
3 construction, and we've already got plenty of
4 congestion just from hotel workers.

5 And so Mr. Jencks did come up with a
6 condition that talks about a Construction
7 Transportation Management Plan, and if you
8 would allow him to come up and pass this
9 condition out to the Members, it might address
10 Ms. Johnson's concern.

11 CHAIR MOLINA: Okay, Mr. Jencks.

12 MR. JENCKS: Thank you, Mr. Chair, Ms. Anderson.

13 Yeah, I have copies of that right here. As
14 Ms. Anderson described, this proposed
15 condition was developed specifically to
16 address the issue of the concurrent
17 construction between the Pi'ilani Highway,
18 converting it from a two-lane to a four-lane
19 facility, and allowing us to do work onsite.
20 She's correct in saying that the excavated
21 rock from the project of widening the highway
22 would be used and reduce the transportation
23 traffic if we used it onsite. So it makes a
24 lot of sense allowing us to continue work
25 onsite while we're doing the highway widening,

1 but it also makes a lot of sense to reduce
2 traffic to the degree possible. So this
3 condition was drafted with that -- with that
4 intent in mind.

5 And I don't think it's unreasonable even
6 beyond that -- there was a question about
7 parking for construction vehicles. Certainly
8 there's no other place to park at that end of
9 the highway. They would all have to be
10 parking within the project area, certainly,
11 and it isn't unreasonable to ask us, where
12 feasible, to try to get guys to carpool or if
13 we can set up a Vanpool system from an offsite
14 facility, do that as well where feasible.
15 That's fine. Be happy to do that.

16 CHAIR MOLINA: Okay, thank you, Mr. Jencks.

17 Member Anderson.

18 COUNCILMEMBER ANDERSON: Someone should read this
19 into the record so that people know what we're
20 talking about, and I'd be happy to do that,
21 and then I think we should ask if this
22 addresses Ms. Johnson's concern.

23 CHAIR MOLINA: Okay, Member Anderson, I'll give you
24 the honor.

25 COUNCILMEMBER ANDERSON: Thanks. Honua`ula Partners

1 LLC will develop and submit as part of the
2 initial Phase II application a transportation
3 plan that provides for the reduction of
4 construction-related traffic created by any
5 onsite construction activity within Project
6 District 9 during the course of improvements
7 to the Pi`ilani Highway between Kilohana and
8 Wailea Ike Drive. The transportation plan
9 shall provide for a combination of offsite
10 park-and-ride staging area for workers and/or
11 restrictions on worker access to any onsite
12 construction activity during peak hour traffic
13 movements on Pi`ilani (inaudible) -- I mean
14 highway between Kilohana and Wailea Ike Drive.

15 So I think maybe the only thing that may
16 not address Ms. Johnson's concern is the
17 phrase, "during the course of improvements to
18 Pi`ilani Highway." But then -- because she's
19 talking about the whole construction period.
20 But then it does go on to say that "the
21 transportation plan shall provide for
22 restrictions on worker access to any onsite
23 construction activity during peak hour traffic
24 movements."

25 So I'm not sure if, Ms. Johnson, that

1 addresses your concerns totally or not?

2 CHAIR MOLINA: Member Johnson.

3 COUNCILMEMBER JOHNSON: Chair, I think that there
4 are some components -- this one, I think the
5 second part of the condition where it's
6 specifically addressing the Pi'ilani Highway
7 between Kilohana and Wailea Ike Drive, that is
8 one aspect of the whole build out. And I'd
9 really like a -- I guess a hybrid, because I
10 like Ms. Suyama's suggestion, where it's going
11 to be reviewed by somebody, obviously not us,
12 because we're not transportation management
13 officials, but I think that it would be
14 helpful, and particularly as precedent
15 setting, it's really important for us to allow
16 your Maui County Department of Transportation,
17 because they do the ride services, to have a
18 mechanism and to have a condition whereby they
19 will have a role, as well as the Department of
20 Public Works, in managing some of these
21 traffic flow problems.

22 So, therefore, I would really -- I
23 support both sets of wording and however they
24 can be incorporated. If Ms. Suyama's language
25 is the first part and then, you know, just

1 perhaps saying further that -- with regard to
2 the specific aspect of the construction
3 between Kilohana and Wailea Ike Drive on the
4 improvements for Pi'ilani Highway, I think
5 that could be like a sub -- a sub area, you
6 know, or like if this is number 1, this would
7 be 1A. So that's what I would -- I would feel
8 more comfortable doing that, because then that
9 way there is a plan that's been adopted, and
10 if it's impractical to do park and ride for
11 some individuals, then at least our Department
12 of Transportation and Department of Public
13 Works could work that out.

14 CHAIR MOLINA: Okay.

15 COUNCILMEMBER JOHNSON: That would be my preference.

16 CHAIR MOLINA: Thank you, Member Johnson.

17 And, Staff, could you just clarify what
18 was just handed out? We received one document
19 from Mr. Jencks, and then Staff just handed
20 out a second document, so for the record to be
21 read.

22 MS. NAKATA: The second document was the language
23 that the Deputy Planning Director handed to me
24 originally saying which she requested be typed
25 up and distributed.

1 CHAIR MOLINA: Okay, thank you, Members, just so we
2 understand the differences between the two
3 documents.

4 So, Member Johnson, are you willing to I
5 guess -- I guess merge Conditions 3 and 4 into
6 the conditions as submitted by the Applicant
7 as well as the Planning Director?

8 COUNCILMEMBER JOHNSON: Yes, and I think that that
9 would be appropriate. And if you, you know,
10 want to just merge it into one omnibus
11 condition, whatever the transitional language
12 is. I think the first language should come
13 first about the Transportation Management
14 Plan, and then the second, which would be
15 Mr. Jencks' submittal, would be such
16 transportation shall further provide, and then
17 use the language, because that is one
18 component of the entire construction project.
19 And that's -- and I can make that as a motion.

20 CHAIR MOLINA: Okay. You want to go ahead and --
21 Staff, do you need some time to merge the --
22 work on the language? Maybe what we can do,
23 we can come back to it and if at a later point
24 you want to work with Staff and --

25 COUNCILMEMBER JOHNSON: Uh-huh.

1 CHAIR MOLINA: -- we can have something put together
2 for the Committee's consideration.

3 COUNCILMEMBER JOHNSON: That's fine, Mr. Chair, if
4 you want to do that, but I just need to know
5 if that's where Members want to go with this
6 or not.

7 CHAIR MOLINA: Members, your comments? The Chair is
8 open to this consideration. Your comments
9 from Member Johnson to combine language from
10 the Applicant as well as the Deputy Planning
11 Director to address Conditions 3 and 4.
12 Mr. Mateo.

13 COUNCILMEMBER MATEO: Chairman, in other conditions,
14 when there was a request for a report, that --
15 like this one, the submission by -- that
16 Ms. Suyama had provided Ms. Johnson with, it
17 requests an annual report submitted to the
18 Department of Public Works and the County
19 Department of Transportation to document.
20 This just goes to those -- to those
21 departments? This does not come to the
22 Council as all the other reports apparently
23 seems to be coming all to us as well?

24 CHAIR MOLINA: Member Johnson?

25 COUNCILMEMBER JOHNSON: Yes, and we could include

1 that as well, because I think that was just,
2 you know, one of the intents is that we always
3 want to know back what is -- what is -- and
4 they could submit it to us on an annual basis
5 as well, so that language could be
6 incorporated.

7 CHAIR MOLINA: Okay. Staff, you made note of that
8 consideration as well? Any objections to
9 incorporating that additional language into
10 this proposed condition from Member Johnson,
11 Members, at this point? Okay. So what we'll
12 go ahead --

13 COUNCILMEMBER MATEO: Chairman, I'm sorry.

14 CHAIR MOLINA: Mr. Mateo.

15 COUNCILMEMBER MATEO: I didn't -- I didn't ask for
16 the language to be included. I just wanted to
17 know whether that was part of the intent --

18 CHAIR MOLINA: Okay.

19 COUNCILMEMBER MATEO: -- to have additional reports
20 all end up with us.

21 CHAIR MOLINA: Yeah, I think --

22 COUNCILMEMBER MATEO: So I didn't ask for it to be
23 included in this language.

24 CHAIR MOLINA: Okay. All right. Thank you for
25 making that clarification, so we will not need

1 to incorporate that language, then, if there's
2 no objections.

3 COUNCILMEMBER JOHNSON: Mr. Chair, I just think to
4 be consistent, if an annual report is going to
5 be generated to Public Works and County
6 Department of Transportation on an annual
7 basis, just say a copy should be provided to
8 the Chair of the Council or however we're
9 transmitting. Only because we're requiring it
10 in every other situation, so, I mean --

11 CHAIR MOLINA: For consistency's sake, then, I guess
12 the Council --

13 COUNCILMEMBER JOHNSON: Some -- some Members may be
14 interested, some may not, but some may also
15 want to see, particularly those who Chair the
16 different subject matter to see if this is
17 really working, and as a memory jogger that we
18 actually have this condition.

19 CHAIR MOLINA: Sure. Okay. We'll take that into
20 consideration.

21 So we'll go ahead and work on the
22 language with you, Member Johnson, and bring
23 it back at a later point. So let's continue
24 with your document, Member Johnson.

25 COUNCILMEMBER JOHNSON: Yes, I'll address Number 6

1 right now, because early on -- and I know I
2 did not dream this, but we were told at some
3 point, I think it was perhaps by the former
4 Planning Director, that the General Plan
5 Advisory Committee would be looking at some of
6 the ALISH land readings as a part of I believe
7 it was Act 183, which were lands that were
8 worthy of preservation for agriculture or
9 lands of significance to the State of Hawaii.

10 So because in our last, or one of our
11 last meetings, or perhaps a completely
12 different meeting, anyway, I was under the
13 impression, though, that the General Plan
14 Advisory Committee was not going to get into
15 that at all. And because they're not going to
16 be addressing the preservation of those lands
17 or making a recommendation to the Council
18 based on what our Planning Director had
19 stated, I would rather look at this particular
20 condition in the context of Member Anderson's
21 conservation proposal.

22 And the reason, Mr. Chair, is that if
23 we -- we can't hold up the entire process
24 because we haven't identified those lands that
25 are worthy of preservation, but because of the

1 significance that's been stated about the
2 lands that are encompassed in Member
3 Anderson's Condition Number 13, I would rather
4 just defer to that and hope that we could
5 consider passage of that in the absence of any
6 report as to what lands are worthy of
7 preservation. Because we just don't have it
8 yet. So I'm willing to just eliminate that
9 but address it within the context of Member
10 Anderson's condition.

11 CHAIR MOLINA: Okay, so delete your proposed --

12 COUNCILMEMBER JOHNSON: Just delete it for that and
13 I'll make my case when it comes to Member
14 Anderson's condition.

15 CHAIR MOLINA: Okay, thank you very much, Member
16 Johnson.

17 Let's move up a little bit to your fifth
18 proposal.

19 COUNCILMEMBER JOHNSON: Yes.

20 CHAIR MOLINA: If you could read that into the
21 record.

22 COUNCILMEMBER JOHNSON: That would be a condition to
23 prohibit transient vacation rentals and
24 time-shares within the subject development in
25 perpetuity.

1 And because of the controversy that
2 we've been going through and all of the
3 problems, I know we imposed this condition on
4 Kapalua Mauka, and that would be a condition
5 that I would stipulate for this particular
6 zoning, that we prohibit transient vacation
7 rentals and time-shares within the subject
8 development in perpetuity.

9 CHAIR MOLINA: Okay, thank you, Member Johnson.

10 Members, comments, or do we have
11 consensus to incorporate this as a condition?

12 COUNCILMEMBER ANDERSON: Consensus.

13 CHAIR MOLINA: Okay, shall we take a vote? It might
14 cause some other Members to be jumpy if we
15 don't take -- but, Mr. Hopper, you know, on
16 that issue of consensus versus taking a vote,
17 if we do have unanimous consensus from the
18 Members present, that can be accepted? I
19 mean, is it an either/or situation?

20 MR. HOPPER: Again, this is --

21 CHAIR MOLINA: Conduct a formal vote or consensus,
22 unanimous consensus vote?

23 MR. HOPPER: Again, this is your rules, but under
24 Robert's Rules of Order it's my understanding
25 that if you do something by no objections and

1 no one has any objections, that has the same
2 force and effect as if there was a vote,
3 because the action was taken, but as soon as
4 someone says, "I object," then you have to
5 take a vote. That's how I understand it. I'm
6 not sure if the Council rule on that is any
7 different from Robert's Rules, but that's how
8 I understand the Robert's Rules. And Staff
9 certainly can correct me if I'm wrong, but
10 that's how I understand it.

11 So you can go back and amend what you
12 have done. You can have a motion to amend
13 something that was previously adopted, but,
14 you know, as far as a distinction between
15 whether a vote was taken or if an action was
16 done by unanimous consent, I don't see a
17 distinction.

18 CHAIR MOLINA: Okay. So, for example, a Member who
19 is not here today and the six Members of us
20 approve this by consensus and one Member comes
21 back and decides that they would like to make
22 an amendment or something to add to it, then
23 they could formally propose an amendment to
24 something that was passed by consensus, then?

25 MR. HOPPER: Right, and typically things by

1 consensus, as I understand Robert's, are to be
2 sort of minor issues, or issues of minor
3 importance, for that reason, but, you know,
4 you can -- as far as these conditions are
5 concerned, I mean, until you have a final vote
6 to incorporate all of the conditions, I
7 believe everything is on the table because
8 there's really no action taken. Afterwards,
9 you know -- it's different than if there's a
10 development approved, the development is done,
11 and then there's motion to reconsider, you
12 know, the development or something. That's a
13 bit different. But if you just want to amend
14 one of the conditions while you're still in
15 committee working on the conditions, I don't
16 see a problem with that, but, again, I would
17 defer to Staff and the Chair on their
18 interpretation of the rules.

19 CHAIR MOLINA: Thank you very much, Mr. Hopper. So
20 I hope those who are not here with us today
21 have heard your explanation so the Chair
22 doesn't get criticized for inconsistencies and
23 so forth, but anyway --

24 COUNCILMEMBER JOHNSON: Mr. Chair.

25 CHAIR MOLINA: -- as in all cases, if the body is

1 not comfortable going via consensus vote, any
2 one of you can propose a formal vote. So I
3 just wanted to make that clear to those who
4 are not here with us today.

5 Member Johnson.

6 COUNCILMEMBER JOHNSON: Mr. Chair, to err on the
7 side of caution and to prevent any future
8 concern, I will make a motion that a condition
9 to prohibit transient vacation rentals and
10 time-shares within the subject development in
11 perpetuity be moved.

12 COUNCILMEMBER ANDERSON: Second.

13 CHAIR MOLINA: Okay, it's been moved by Member
14 Johnson, seconded by Member Anderson to place
15 a condition to prohibit transient vacation
16 rentals and time-shares within the subject
17 development in perpetuity. Discussion?

18 Seeing none. All those in favor --

19 VICE-CHAIR PONTANILLA: Chair.

20 COUNCILMEMBER ANDERSON: Chair.

21 CHAIR MOLINA: Mr. Pontanilla.

22 VICE-CHAIR PONTANILLA: Thank you.

23 CHAIR MOLINA: Sorry.

24 VICE-CHAIR PONTANILLA: I know, you know, we've had
25 conditions in regards to Item No. 5, and along

1 with prohibition of transient vacation rentals
2 and time-shares, we also have -- had included
3 in some of the projects ohana units, because
4 we all talk about water, you know, you can
5 increase density within the project, and the
6 issue about water, you know, you're going to
7 provide water for 1,250 units, and then you
8 adding ohana units, you know, it really
9 doesn't make sense.

10 CHAIR MOLINA: Uh-huh.

11 VICE-CHAIR PONTANILLA: So I don't know if Member
12 Johnson had considered adding ohana units?

13 CHAIR MOLINA: Member Johnson.

14 COUNCILMEMBER JOHNSON: No, I hadn't really
15 considered that, because it was my
16 understanding that some of these would have, I
17 guess, based on the lot size, they would still
18 come within the number of units including the
19 main dwelling and an ohana. Now, if that's
20 not a correct understanding, then I'm sure the
21 developer can correct me, but that was why I
22 believe that the number of units to actually
23 be constructed within the entire development
24 was limited by the developer, and that, to me,
25 included the ohanas.

1 CHAIR MOLINA: Mr. Pontanilla, any additional
2 comment?

3 VICE-CHAIR PONTANILLA: No. You know, one of the
4 concerns that we all talk about is
5 availability of water, and if there are lot
6 sizes greater than 7,200 square feet, then the
7 possibility is there to provide an ohana unit.

8 CHAIR MOLINA: So are you saying that -- include in
9 the prohibition ohanas as well as transient
10 vacation rentals?

11 VICE-CHAIR PONTANILLA: You don't increase the
12 density of the project.

13 CHAIR MOLINA: Okay, so, are you considering
14 proposing an amendment to Member Johnson's
15 condition?

16 VICE-CHAIR PONTANILLA: Let's see if a Member --

17 CHAIR MOLINA: All right, take a pass on that,
18 right?

19 Member Anderson.

20 COUNCILMEMBER ANDERSON: Yeah, Mr. Chairman, we did
21 discuss the ohana unit situation some time
22 ago, and I don't have it right in front of me,
23 the district -- Project District Zoning that
24 this Committee had already passed in January,
25 but we did discuss it, and I think there's

1 restrictions in that already on ohana units.
2 We discussed this with Mr. Jencks, that the
3 ohana units -- anybody that builds an ohana
4 unit would be counted as one of the 1,400
5 units that they're being permitted to do. And
6 it's in the minutes. It's on the record. I
7 specifically asked Mr. Jencks, so that means
8 if the first, say, 100 land -- lot owners
9 build ohana units, then that would be counted
10 as 200 units, and he said yes. So he's
11 restricted to 1,400 units total.

12 Now, my feeling about ohana units is I
13 like the idea of an ohana unit, because that's
14 a long-term rental for somebody. And many of
15 these homeowners are going to be offshore
16 buyers who are not going to be living here
17 full-time, and they may want to have somebody
18 living on their property for security reasons
19 and for maintenance reasons. And, so, you
20 know, that's really up to Mr. Jencks and his
21 investment group, I guess, as to where they
22 cut off ohana units, probably with their
23 CC&Rs. But I don't have any objection to
24 ohana units as long as the restriction to
25 1,400 units total stands, and we were assured

1 that it would be.

2 CHAIR MOLINA: Thank you, Member Anderson.

3 Members, any other discussion on the
4 floor? Mr. Hopper.

5 MR. HOPPER: I just think I should point out that
6 under the Code right now the transient
7 vacation rentals are prohibited everywhere
8 except in the Hotel District. Is the intent
9 of this to prohibit transient vacation rentals
10 even through the conditional use permit
11 process, which is considered an ordinance as
12 well? Because right now, I mean, it's -- me
13 looking at it, it's a bit redundant, because
14 the Code already prohibits them and says that
15 transient vacation rentals aren't permitted,
16 but Council has granted conditional use
17 permits before, so I'm not sure if more
18 specific language would be appropriate for
19 this type of condition, if the intention is to
20 prevent a conditional use permit from being
21 issued. And it may be even difficult to do
22 that, frankly, because a conditional use
23 permit is a Council action by ordinance. So
24 unless you amend the Conditional Use Permit
25 law itself, there may be some problems with

1 restricting in perpetuity transient vacation
2 rentals, if it's something that can be allowed
3 by a conditional use permit.

4 CHAIR MOLINA: Okay, thank you, Mr. Hopper.

5 Member Johnson.

6 COUNCILMEMBER JOHNSON: Yes, and that was our
7 intent, is that irrespective of any other
8 ordinance that's adopted -- because, as you
9 know, sometimes we amend our ordinances, but
10 because this is a condition specifically
11 related to this particular zoning and this
12 specific request, I think one of the concerns
13 is the intensification of use. It's already
14 an area that has impaired water quality. It's
15 just -- it's site specific. So if we need to,
16 you know, be, I guess, more restrictive or
17 more specific, the language that I'm proposing
18 now is just generally to address that concern.
19 If Corporation Counsel by the time we get this
20 actually farther along has something more
21 specific to spell that out, I certainly would
22 not object to any recommendations, but my
23 intent would be because of where this is
24 located, the site specificity, that even
25 conditional use permits not be -- not be

1 permitted.

2 CHAIR MOLINA: Thank you, Member Johnson.

3 Chair would like to call up the
4 Applicant, Mr. Jencks, and just ask basically
5 one simple question.

6 Mr. Jencks, if you could take the stand,
7 please, or the podium. Is it the intent of
8 the investment group or your covenants to
9 allow -- to not allow transient vacation
10 rentals? Will that be spelled out clearly,
11 not to permit this in your subdivision?

12 MR. JENCKS: That's correct. I mean, it's not
13 permitted by zoning, Mr. Chair.

14 CHAIR MOLINA: Right.

15 MR. JENCKS: Simply, it's just not permitted
16 anywhere except the hotel district. Same
17 thing as time-shares, it's just not permitted.

18 CHAIR MOLINA: Okay. I just wanted to hear it from
19 you --

20 MR. JENCKS: That's fine.

21 CHAIR MOLINA: -- so to ensure that. Thank you.

22 Member Anderson.

23 COUNCILMEMBER ANDERSON: Thank you, Chairman. It
24 certainly is not permitted, but that hasn't
25 stopped it from happening. And I know that

1 Chair Hokama has on several other occasions
2 requested a condition such as this, just so
3 that it's very clear, you know, by anybody who
4 might be buying land, these conditions will be
5 deeded with the land and so that they cannot
6 say they didn't know, because the condition
7 would be there on their -- on their deed.

8 I just want to point out, though, that
9 in the Project District Zoning Ordinance that
10 has already been addressed, there is one
11 amendment I want to make to it before we
12 finish this, but it already states on page 2
13 under land use subdistricts and allowable
14 densities and acreage, under Item B, the
15 number of dwelling units that may be
16 constructed in Kihei-Makena Project District
17 9, Wailea 670, inclusive of accessory
18 dwellings, shall not exceed 1,400.

19 So maybe we need to, I guess, amend
20 that, considering Mr. Jencks wants to do 250
21 units offsite. So wasn't that what you
22 represented to us, that the 250 affordable
23 rental units that you want to do in North
24 Kihei would be inclusive of the 1,400 units?

25 MR. JENCKS: That's correct. That's correct.

1 COUNCILMEMBER ANDERSON: So the way this reads now,
2 this would allow him 1,400 units in Wailea 670
3 in addition to the 250. So maybe we need to
4 amend this somehow to be inclusive of any
5 offsite units to fulfill the affordable
6 housing requirement, or something to that
7 effect. Because, you know, I know what you're
8 saying, and I understand your intention, but
9 it doesn't read that way right now. And, you
10 know, again, five years down the road, it
11 could be very misinterpreted, especially if
12 there's new owners and all that.

13 MR. JENCKS: Sure. Mr. Chair, if I may.

14 CHAIR MOLINA: Thank you, Member Anderson.

15 Mr. Jencks.

16 MR. JENCKS: Getting back to the condition. If it's
17 the wishes of the Committee to put a condition
18 that says no TVRs, that's fine. The law is
19 pretty clear in my mind. Same with
20 time-shares.

21 CHAIR MOLINA: Okay, thank you, Mr. Jencks.

22 Members, any further discussion as it
23 relates to Member Johnson's proposed
24 condition? Seeing none. All those in favor,
25 signify by saying "aye."

1 Education that outlined some of their, I
2 guess, new policies with regard to agreements
3 and at what point they would be entering into
4 them.

5 So I just offer that maybe this would be
6 one point where you might want to revisit that
7 and discuss it, because depending on what the
8 Committee wants to do, I may or may not pursue
9 this condition, but I think because of that
10 response from Department of Education, we
11 really need to just address it and understand
12 how we're going to actually provide for the
13 needs of the community and give some
14 protection, I guess, to the area residents
15 that they're going to have sufficient
16 educational facilities available when this
17 project comes up, and that there will be
18 concurrency.

19 So I want to thank you, Mr. Chair, for
20 allowing me the opportunity to go through some
21 of these, and I'll work on the rest, and I
22 promise that when I return I will either have
23 the conditions fully --

24 CHAIR MOLINA: Drawn up.

25 COUNCILMEMBER JOHNSON: -- typed out, you know, so

1 that you can look at it, or I will decide that
2 perhaps already within the bill we've already
3 addressed it. But I thank you very much,
4 Mr. Chair.

5 CHAIR MOLINA: Thank you, and, Member Johnson, if
6 possible, if you could draft it up as soon as
7 you can so that way it will give the Members
8 some time to digest, look at the conditions,
9 give them a little more time to look at the
10 pros and possible cons with it as well.

11 COUNCILMEMBER JOHNSON: And I thank you very much,
12 Mr. Chair, and I apologize, because sometimes
13 I -- you know, like because we've been hop,
14 skipping, and jumping to different sections,
15 some of these in my absence I was unclear as
16 to whether we had really addressed it or not,
17 but I will work with Staff and possibly with
18 Member Anderson too, because she has some
19 other conditions that she has also inserted,
20 and I just want to make certain that I'm not
21 duplicating her efforts.

22 CHAIR MOLINA: Thank you, Member Johnson.

23 COUNCILMEMBER JOHNSON: Thank you very much.

24 CHAIR MOLINA: One last question for you on your
25 second proposal, a condition to require that

1 all of the roadway infrastructure necessary to
2 be in compliance with the Kihei-Makena
3 Community Plan be implemented prior to
4 construction of the first phase of the subject
5 development, has this been addressed? I
6 believe it would be -- it would tie in
7 probably to either condition -- the second
8 condition from the original matrix?

9 COUNCILMEMBER JOHNSON: I think that what I'm going
10 to do -- this is one of them where I had to
11 recheck the implementing action and the matrix
12 in the back of the South Maui Community Plan,
13 because I wanted to make certain -- I know
14 that we addressed some of the issues, but
15 there were implementing actions and certain
16 criteria, and I just wanted to make sure that
17 I didn't skip over that. Because I'm not
18 familiar -- as familiar as -- you know, with
19 that plan as I am for the West Maui one, so
20 anyway, I will do my homework on that one too,
21 and also work with Member Anderson, but I do
22 have a copy of that community plan at home.

23 CHAIR MOLINA: All right, thank you very much,
24 Member Johnson.

25 COUNCILMEMBER JOHNSON: Thank you.

1 CHAIR MOLINA: Members, we're going to be losing
2 quorum in a few minutes. I believe,
3 Mr. Medeiros, you have a commitment, and I
4 thank you for changing your whole calendar
5 around. You had some I guess meetings with
6 some of your Hana constituents that you had
7 planned for today, and I thank you for
8 rearranging it so you could be here for us
9 today. What the Chair would like to do is --
10 obviously we're not going to reach a final
11 decision today, so I would like you guys to go
12 back and look at your calendars for another
13 recessed day. I'm going to throw out to you
14 for consideration -- the Chair had thought
15 initially of -- if we didn't make a decision
16 today, to recess until Monday, November 12th,
17 but that happens to be Veterans' Day, which is
18 a holiday, and I don't believe any of you
19 would be interested -- inclined to coming on a
20 holiday. I see Member Pontanilla's hand
21 saying okay. Okay, no, just kidding. But,
22 no, in all seriousness, it's a day that we
23 should, you know, rest and recognize the
24 efforts of our veterans, and for some of us to
25 catchup on family time.

1 So I would ask that you maybe consider
2 Friday afternoon. I know the Mayor has her
3 energy conference, but maybe if later in the
4 day we could just convene for a short while,
5 and then we could recess until another time.
6 Because I don't know -- depending on what your
7 time commitments are after the 9th, you know.
8 So, anyway, just for the time being look at
9 Friday the 9th at maybe 5:00 o'clock or 4:00
10 o'clock. I don't know how many of you will be
11 meeting -- going to the Mayor's conference, or
12 maybe even earlier. So, anyway, for now let's
13 just look at the date of Friday the 9th, and
14 when we come back, let's look at considering
15 any -- some particular time in the afternoon.

16 So meeting in recess. How much time do
17 you need, Members? Ten minutes? Okay, all
18 right, let's call this meeting in recess and
19 we will reconvene at 2:55. (Gavel).

20 **RECESS: 2:44 p.m.**

21 **RECONVENE: 3:10 p.m.**

22 CHAIR MOLINA: (Gavel). Recessed Land Use Committee
23 meeting of October 18th, 2007 is now back in
24 session. It is ten minutes after the hour of
25 3:00 o'clock, Wednesday, November 7th. Thank

1 you for that extended break, Members. We all
2 had an opportunity to check our calendars for
3 another recessed meeting.

4 The Chair had initially recommended
5 Friday, November 9th, however, there was some
6 difficulty in establishing quorum for that
7 day, so the Chair is recommending we meet
8 tomorrow, November 8th, 1:30 here in the
9 Chambers. I do believe we have commitments
10 from Members Pontanilla, Medeiros, and
11 Mr. Mateo, and I just spoke with Mr. Victorino
12 by phone, he is -- he will be able to be here,
13 as well as myself. Everybody else was a no as
14 far as -- is that correct, Staff?

15 MS. NAKATA: Excuse me, Mr. Chair. It was Member
16 Johnson who is available from 1:30 to 5:00 and
17 not Member Mateo.

18 CHAIR MOLINA: Okay, Member Johnson. All right.
19 Now, this would be for tomorrow, and I know,
20 Mr. Mateo, you would be available for a short
21 time tomorrow, the 8th, am I correct?

22 COUNCILMEMBER MATEO: Very short.

23 CHAIR MOLINA: Very short. Okay. Thank you.

24 COUNCILMEMBER MATEO: Just, Chairman, the intent was
25 to allow you to look at the next --

1 CHAIR MOLINA: Yes.

2 COUNCILMEMBER MATEO: -- scheduling.

3 CHAIR MOLINA: Yes. And if there is another Member
4 that happens to come in, then we could
5 probably continue without you as well,
6 although we would love to have you here, but
7 totally understand your schedule.

8 Okay, Members, so we -- at this point we
9 apparently have quorum for tomorrow, right
10 here in the Chambers, 1:30, so the noes that
11 we have currently have, Staff, who are the
12 Council Members that are no, unavailable for
13 tomorrow?

14 MS. NAKATA: Member Anderson and Member Hokama.

15 CHAIR MOLINA: Okay, and Member Baisa also mentioned
16 that --

17 MS. NAKATA: I'm sorry, Chair, I didn't get to check
18 with Member Baisa's Staff for tomorrow.

19 CHAIR MOLINA: I know Member Baisa was available for
20 Friday, but I'm not sure if she would be able
21 to join us tomorrow. So just for the record,
22 she was -- she had made herself available for
23 Friday at 1:30.

24 So there you have it, Members, we shall
25 be in these Chambers again tomorrow at 1:30 to

1 reconvene the October 18th, 2007 Land Use
2 meeting. So with that being said, Members, we
3 shall recess until tomorrow, Thursday,
4 November 8th, 1:30 p.m., right here in the
5 Chambers. This meeting is in recess.

6 (Gavel).

7 **RECESS:** 3:11 p.m.

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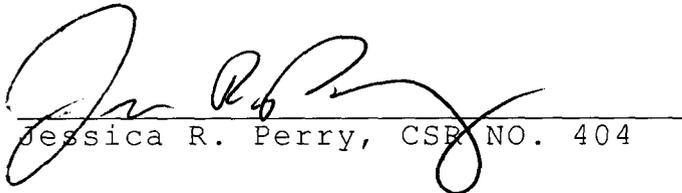
C E R T I F I C A T E

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

I, Jessica R. Perry, Certified Shorthand Reporter for the State of Hawaii, hereby certify that the proceedings were taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

I further certify that I am not attorney for any of the parties hereto, nor in any way concerned with the cause.

DATED this 5th day of November, 2007, in Honolulu, Hawaii.



Jessica R. Perry, CSR NO. 404