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M I N U T E S
LAND USE COMMITTEE
Council of the County of Maui
Council Chamber
November 8, 2007

APPROVED:

Committee Chair

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

2

3 **PRESENT:** Councilmember Michael J. Molina, Chair
4 Councilmember Joseph Pontanilla, Vice-Chair
5 Councilmember Gladys C. Baisa, Member
6 Councilmember Jo Anne Johnson, Member
7 Councilmember Danny A. Mateo, Member

8 (Leave 2:33 p.m.)

9 Councilmember Bill Kauakea Medeiros, Member
10 Councilmember Michael P. Victorino, Member

11

12 **EXCUSED:** Councilmember Michelle Anderson, Member
13 Councilmember G. Riki Hokama, Member

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

17

18 **ADMIN.:** Colleen Suyama, Deputy Director,
19 Department of Planning (Arrive 3:03)
20 Michael J. Hopper, Deputy Corporation
21 Counsel, Department of the
22 Corporation Counsel

23

24 **OTHERS:** Charles Jencks, Owner's Representative,
25 Honua`ula Partners, LLC

1 Gwen Ohashi Hiraga, Principal,
2 Munekiyo & Hiraga, Inc.
3 (Applicant's entitlement consultant)
4 B. Martin Luna, Esq.,
5 Carlsmith Ball LLP
6 (Applicant's attorney)
7 Joyclynn Costa
8 Kimokeo Kapahulehua
9 Additional attendees (5)

11 **PRESS:** Claudine San Nicolas, *The Maui News*
12 *Akaku--Maui County Community Television, Inc.*
13

14 **ITEM NO. 38: CHANGE IN ZONING AND PROJECT DISTRICT**
15 **PHASE 1 APPROVAL FOR "HONUA`ULA/WAILEA**
16 **670" RESIDENTIAL DEVELOPMENT**
 (C.C. No. 01-334)

17 CHAIR MOLINA: (Gavel). The recessed Land Use
18 Committee meeting of October 18th, 2007 is now
19 back in session. It is 1:35 on Thursday,
20 November 8th. Thank you very much, Members,
21 who are here today. I know many, if not all
22 of us, left the Mayor's energy conference a
23 little early today in order to be here to take
24 care of whatever business we can get done
25 today, so the Chair expresses his appreciation

1 to each and every one of you. And for the
2 record, the Members that are here is Member
3 Mateo, Baisa, Johnson, Medeiros, Pontanilla,
4 Victorino, and excused are Members Anderson
5 and Hokama.

6 And from Committee Staff we have
7 Legislative Analyst Carla Nakata, Committee
8 Secretary Tammy Frias, and from the
9 Corporation Counsel's Office we have
10 Mr. Michael Hopper.

11 Members, when we last left off I believe
12 we had been discussing some proposed
13 conditions from Member Johnson, and before us
14 today we have a revised proposed condition.
15 And at this point, Member Johnson, if you'd
16 like to walk us through this proposed
17 condition, and the Committee will then
18 consider action on this.

19 COUNCILMEMBER JOHNSON: Yes, and I apologize. I
20 haven't had time to run this by the Chair of
21 the subject matter on the Council, but because
22 I have experienced, you know, different
23 questions being asked, I guess, as part of
24 affordable housing, and also because the
25 condition that is in our Residential Workforce

1 Housing Ordinance is a little bit different,
2 this is more detailed, I felt that one of the
3 things that may be helpful and one of the
4 things that could really help us to understand
5 where our housing units are going would be to
6 require that, for large developments such as
7 this, to provide a report. And it would be
8 provided as follows, and I'll just read it.

9 That WCPT/GW Land Associates LLC, its
10 successors, and permitted assigns shall
11 provide annual status reports to the Director
12 of Housing and Human Concerns and the County
13 Council commencing within two years following
14 the effective date of the Change in Zoning and
15 ending upon completion of all residential
16 workforce housing requirements. Status
17 reports shall include both market and
18 affordable and shall contain the following:
19 A, the number of units constructed and sold;
20 B, the sales price, square footage, number of
21 bedrooms and baths and lot size; C, the income
22 bracket for each purchaser of the units; D,
23 the number of units sold to public employees,
24 for example, Fire Department, Police
25 Department, teachers, et cetera, and the

1 income category to which those employees
2 belong, and an example would be six fire
3 fighters between 100 percent and 140 percent
4 of median income and two fire fighters at 140
5 to 160 percent of median income; E, the number
6 of units that are financed within the State of
7 Hawaii, outside the State of Hawaii, are those
8 acquired as an outright cash purchase, the
9 number of units sold as multiple purchases to
10 the same buyer, to a trust entity, or to an
11 LLC; G, the number of units offered for resale
12 and the sales concluded with the purchase
13 price listed; H, the number of sales concluded
14 through means of one or more of the following:
15 buyback provisions, incentive programs, or any
16 other housing assistance program, whether
17 public or private; and I, copies of any
18 restrictive covenants or other measures that
19 are part of the development's housing policy,
20 no pets, smoking, limit on number of occupants
21 or children per bedroom, et cetera.

22 And I know this is rather manini and
23 detailed, but I think one of the things that
24 we're trying to determine, Mr. Chair, is that
25 when the units are actually going out for

1 sale, so many times when we develop our
2 policy, we have no idea what the actual market
3 is going to produce, where those units are
4 going, if they're sold. Sometimes buyers will
5 come in and they'll have other people stand in
6 line when they're doing the lottery, and right
7 away those individuals -- it's revealed that
8 those individuals standing in line are
9 reserving a place for either an outside
10 investor or a real estate sales professional.

11 So what I found is these are the
12 questions that have come up and come up again
13 during our conversations, and even during the
14 workforce housing drafting. I'm not sure if,
15 you know, I mean, they're going to be
16 supported fully, but from my perspective I
17 tried to put down the things that would be
18 most helpful to us as individuals. When we
19 get a report, at least we'll know 20 percent
20 of these homes went to fire fighters,
21 teachers, and policemen, and of that, those
22 are the people that are in, let's say, maybe
23 the 100 to 140 percent range.

24 If we're getting sales that are
25 occurring off island, and that's evidenced

1 many times through people securing mortgages
2 off island, you know, Washington or Oregon or
3 other sales, this is information that's
4 generally concluded with each sale anyway.

5 So my reason in doing this is that I
6 think in knowing where the units are going and
7 if there are resales, what the resale run up
8 is, we're going to be able, I think, as a
9 Council to learn a great deal from a report
10 such as this. And it may seem like it's
11 onerous, it may seem like, oh, it's way too
12 detailed, but for me, Mr. Chair, I think that
13 I want to know that what we're doing, when we
14 are representing the public here, is something
15 that's of benefit, so that later on when we
16 get asked, well, how's that working, I don't
17 have to plead ignorance and say, well, I have
18 no idea. Because right now that's what I have
19 to tell people, I have no idea. And it's
20 unfortunate, but it's just the nature of what
21 happens once we pass something along.

22 And as you know, Mr. Chair, over time
23 things do change. So at least this way, for
24 those units and for -- as long as the
25 residential workforce housing requirements are

1 met, that -- because this is going to be a
2 project that has a long-term build out, I
3 think it's going to be helpful for us to
4 gather that information and then know that if
5 we're doing something properly or we're not
6 doing it properly or we should have changed
7 something in the way that we do business.

8 So that's basically my justification,
9 and it does not -- some components of it do
10 mirror what's in the workforce housing, but I
11 thought rather than just be redundant and --
12 plus the report is required in our Workforce
13 Housing Bill. It's required to be prepared by
14 the Director of Housing and Human Concerns,
15 whereas this is required to be supplied to the
16 Director and to the Council. So it will give
17 us direct input. And it may be that I never
18 see a report, you know, depending on whether
19 this is enacted or not, but for future
20 Councils, when they see the report, I'm hoping
21 that it helps them to know if it's the right
22 direction or not.

23 Thank you, Mr. Chair.

24 CHAIR MOLINA: Thank you, Member Johnson, for this
25 consideration.

1 Committee Members, comments? Mr. Mateo,
2 and would anyone like to ask the Applicant as
3 well what -- his thoughts as well? Chair's
4 open to that as well. Okay, we'll start with
5 Mr. Mateo.

6 COUNCILMEMBER MATEO: Chairman, real briefly, if I
7 could ask Ms. Johnson to once again explain E
8 and F on her proposal.

9 COUNCILMEMBER JOHNSON: E is, for example, if you
10 have a mortgage company that's in California,
11 you would just state that if you have
12 purchased a unit and that unit is through the
13 Bank of California or the Bank of Santa Fe, I
14 just want to get the information as to the
15 number of units that are purchased within the
16 State of Hawaii. So, in other words, if
17 you're financing it through a local
18 institution, Bank of Hawaii, and there's maybe
19 45 sold in that category, you just say 45.
20 Outside the State of Hawaii would be a lender
21 that is not domiciled in the State of Hawaii,
22 and then if somebody just buys it for cash.

23 COUNCILMEMBER MATEO: Okay, and --

24 COUNCILMEMBER JOHNSON: And for F, let's say that
25 a -- just let's say John Doe comes and he buys

1 six units, so they would list on the report
2 here's bought units, and then describe
3 whatever the units are, and just say who the
4 purchaser is. When it's sold to a trust, many
5 times -- and this is something that's quite
6 common. Sometimes, you know, it's really done
7 a lot more in the mainland, but if a trust is
8 buying multiple units for investment purposes,
9 they would just list ten units were sold to X,
10 Y, Z Trust, and then if it's a limited
11 liability corporation, same thing. If it's,
12 you know -- I can't -- like ABC LLC, and they
13 bought ten units, then just show that ten
14 units of market-priced housing were sold to
15 that corporation. And it's just a general
16 thing to know where these purchases are ending
17 up.

18 COUNCILMEMBER MATEO: Okay, thank you.

19 Chairman, thank you. And just to
20 conclude, I -- once again, I'm just going to
21 take another position that would indicate that
22 our Residential Workforce Housing Policy,
23 2.96.110, under Requirements, I believe is
24 specific enough. Because the report is going
25 to come from the Director, I would put more

1 credence in the Director providing us, you
2 know, like verified information. And I think
3 the information that we initially request on
4 the policy, I think meets -- meets our need.
5 It is not restrictive for us to require at a
6 later point via amendment of our Residential
7 Workforce Policy to be as inclusive as we want
8 to be, but we've got to be consistent. And I
9 think, you know, the consistency starts now.

10 So for me, I'm going to stand on the
11 policy. I will give enough credence that we
12 have done our work with the policy and I will
13 not be able to support additional --
14 additional requirements at this time. Thank
15 you, Chairman.

16 CHAIR MOLINA: Thank you, Mr. Mateo.

17 Before Chair recognizes Mr. Pontanilla,
18 related to letters E and F, maybe I'm naive in
19 asking this question of Corporation Counsel,
20 as part of this condition, you're asking that
21 the homeowner or whomever state who their
22 mortgage company is and maybe some might
23 interpret that as maybe somewhat maybe
24 intimate information, and this is a privately
25 financed project. Any privacy issues that

1 may -- could arise from imposing a condition
2 like this?

3 MR. HOPPER: Not that I know of offhand, Mr. Chair.
4 Mortgages are typically recorded, I think, or
5 are oftentimes a matter of public record.
6 They're encumbrances on the property, and so
7 the lenders typically -- you could go to the
8 Bureau of Conveyances and find who that lender
9 is. So I wouldn't see that as a problem
10 offhand as far as a privacy concern, because
11 that's an encumbrance on the person's
12 property, and typically that's public
13 knowledge as far as I'm aware.

14 CHAIR MOLINA: Okay. And so from what you see in
15 this proposed condition, you don't see
16 anything that's going above and beyond that
17 may cause some people to think that this is
18 going a little bit above and beyond as far
19 as --

20 MR. HOPPER: I don't believe so, and the purchaser
21 of a property, whether it's a trust, an LLC,
22 or an individual, that's public knowledge as
23 well, as far as who owns the property. So
24 it's not any information that I do not believe
25 would be not available to the general public.

1 CHAIR MOLINA: Okay. Thank you. Mr. Pontanilla?

2 VICE-CHAIR PONTANILLA: Thank you, Chair. You know,

3 I concur with Member Mateo in regards to the
4 Residential Workforce Housing Policy, Chapter
5 2.96. I think it's comprehensive enough such
6 that, you know, some of the concerns that are
7 mentioned here is also -- you know, already
8 covered. So I go along with Chapter 2.96 as
9 the, you know, Residential Workforce Housing
10 Policy for the developer. Thank you.

11 COUNCILMEMBER VICTORINO: Chair.

12 CHAIR MOLINA: Thank you, Mr. Pontanilla.

13 Mr. Victorino, followed by Mr. Medeiros,
14 and Member Baisa.

15 COUNCILMEMBER VICTORINO: Yeah, thank you, and I do,
16 you know, concur with my two fellow
17 colleagues. And I know Ms. Johnson means well
18 in her intentions. I think we haven't even
19 given the Workforce Development Policy a
20 chance to work, get any reports back, and then
21 we're going to add a long laundry list of
22 additional things, some of which is already
23 inclusive, but some of these, I'm not sure,
24 you know. And as far as much of the
25 information, I mean if you really want almost

1 all of this information, it is public record.
2 I do enough insurance, I can tell you I can
3 get you all this information. This ain't no
4 secrets.

5 So I don't know why I need to know how
6 big a bath or how many bathrooms and bedrooms
7 and lot sizes, when that's all on the recorded
8 deed. I mean, that stuff is there. Now, if
9 you sneak and make things extra or add later
10 on, which many people have tendency to do
11 somewhere along the line, that's another
12 issue. That's not something the developer can
13 control, but I'm sorry, Ms. Johnson, I think
14 what we have in place, first of all, I'd like
15 to see done and let's see how it works, and if
16 we need to amend in the future, I'd have no
17 hesitation, but, I'm sorry, I cannot support
18 this at this time. Thank you, Mr. Chair.

19 CHAIR MOLINA: Thank you, Mr. Victorino.

20 Mr. Medeiros, followed by Member Baisa
21 and Member Pontanilla.

22 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I
23 just want to ask Member Johnson maybe for some
24 clarity. As far as F, that would be most
25 likely pertaining to the market houses?

1 Because do you foresee affordable houses,
2 somebody buying more than one unit is my
3 question?

4 CHAIR MOLINA: Member Johnson.

5 COUNCILMEMBER JOHNSON: Underneath our new Workforce
6 Housing Policy, I'm not sure, because we're
7 doing in some cases a lottery, and I know that
8 in other lotteries what has ended up happening
9 is individuals who are -- if there's an
10 owner-occupant requirement, many times what
11 will end up happening is people who stand in
12 line for other people, it has occurred in the
13 past, but hopefully underneath the new
14 Workforce Housing Policy that would not be
15 occurring.

16 But, again, we're not sure, because
17 sometimes it could be that if the husband is
18 buying one unit and maybe a family member is
19 buying another unit, I'm -- I mean, it's a
20 possibility that members of the same family
21 may be buying multiple units, but it should
22 not really occur under the new policy.

23 So this would be, as you say -- as you
24 say, applicable largely to the market-priced
25 housing. Because a lot of times we get

1 speculation that, well, buyers are coming in
2 from elsewhere and then they're buying up the
3 homes, holding onto them, reselling them,
4 renting them at, you know, very high rents
5 oftentimes, using them as investment
6 properties. And so at least if that's
7 occurring, I felt that this was one way that
8 we would be able to at least monitor that. So
9 you're right, in that it would largely be
10 applicable to market.

11 COUNCILMEMBER MEDEIROS: And my next question is on
12 I.

13 COUNCILMEMBER JOHNSON: Uh-huh.

14 COUNCILMEMBER MEDEIROS: This would be restrictive
15 covenants put on the housing units by the
16 developer?

17 COUNCILMEMBER JOHNSON: Yes, and many times what
18 happens is you'll get in particularly
19 affordable units, there's no pets. There's
20 limited number of occupants. I know we had an
21 issue on Front Street Apartments that there
22 were too many children, that one of my
23 constituents, you know, was turned down,
24 actually, because she had too many children
25 for the number of bedrooms that she was

1 applying for in that particular situation, so
2 there are those restrictions.

3 And I think that sometimes what happens
4 also, some complexes, after a while, they'll
5 limit, you know, the -- I guess the number of
6 children that you may actually have for the
7 entire dwelling. And there are certain
8 policies that even in terms of behavior, some
9 of -- you know, like no children at the pool
10 unless accompanied by an adult, that type of
11 thing, just so that there's an idea of what
12 kind of covenants and restrictions are being
13 applied. Because many times people that have
14 limited means, they really enjoy their pets,
15 and certainly I think the children don't want
16 to live in an environment that is not
17 conducive to allowing them to be children.

18 COUNCILMEMBER MEDEIROS: Okay. Yeah, my question is
19 more having to do with affordable housing, not
20 the market housing. And are you saying that
21 your condition would be concerned if there was
22 a number placed or restricted as far as
23 children per bedroom?

24 COUNCILMEMBER JOHNSON: Well, I think --

25 COUNCILMEMBER MEDEIROS: Just a short answer.

1 COUNCILMEMBER JOHNSON: Yeah, I think under HUD
2 requirements, if somebody's going and getting
3 I guess a HUD home, they, I believe, under
4 Section 8 have certain requirements anyway,
5 but I don't want those requirements to be more
6 restrictive for affordable housing. But, if
7 you notice, I just said to receive information
8 on it, not to have us control it, but if there
9 are things that are making it difficult for
10 individuals to actually move into the housing,
11 we should also know that.

12 COUNCILMEMBER MEDEIROS: Okay. My final question,
13 Mr. Chairman, and it may either be answered by
14 you or by Member Mateo, who's very familiar
15 with the Residential Workforce Housing Policy,
16 is that -- is it part of the policy that
17 restrictive covenants are put on the
18 affordable housing units?

19 CHAIR MOLINA: Let me ask Mr. Mateo if he can answer
20 that question. Mr. Mateo?

21 COUNCILMEMBER MATEO: Well, I don't -- you would
22 have to qualify restrictive covenants.

23 COUNCILMEMBER MEDEIROS: As mentioned -- yeah, as
24 she mentioned in I.

25 COUNCILMEMBER MATEO: Well, you know, this is --

1 this is nowhere inclusive or recognized in the
2 policy itself. This is something that perhaps
3 could be inclusive in your CC&Rs, but the
4 policy does not get involved with the
5 technicalities of what you can and cannot do
6 or what color you can and cannot paint your
7 house, et cetera. That is really something
8 that the developer or the subdivision's
9 association will have to work out in -- as
10 they draft their CC&Rs, but something like
11 that is not part of the existing policy.

12 COUNCILMEMBER MEDEIROS: Okay, mahalo, Member Mateo.

13 And finally, Mr. Chairman, I think we're
14 getting a little too detailed in, you know,
15 the conditions that we're discussing, and I
16 think I'm going to probably be like Member
17 Mateo, satisfied with the description and
18 requirements of the Residential Workforce
19 Housing Policy as being the document that
20 would place the controls over affordable
21 housing units. Mahalo, Mr. Chairman.

22 CHAIR MOLINA: Thank you, Mr. Medeiros.

23 Member Baisa, followed by Member
24 Pontanilla.

25 COUNCILMEMBER BAISA: Member Medeiros and Member

1 Mateo have expressed some of my mana`o at the
2 moment, but I'm getting a little concerned
3 about the depth of some of the issues that
4 we're talking about. Because what we're
5 trying to do here is approve a request, and we
6 have some major, major issues to deal with in
7 this request, and I think we're getting bogged
8 down in a whole lot of time, and please do not
9 take this in a derogatory way, but I think
10 this kind of a conversation about, you know,
11 affordable housing reporting probably would be
12 much more germane in a Housing and Human
13 Services Committee. And if we want to, you
14 know, add to our ordinance or amend it, I
15 think it could be there and then it could be
16 applied to all people that are doing business
17 with us as a, you know, requirement, rather
18 than trying to refine this now as we try to
19 deal with this very lengthy process that we're
20 dealing with. I'd like us to kind of deal
21 with the more critical issues.

22 I understand what Member Johnson is
23 doing, and I'm sure that this is useful
24 information, but I'm not sure this is the time
25 and place to do it. So I will be -- not be

1 supporting this.

2 CHAIR MOLINA: Thank you, Member Baisa.

3 Mr. Pontanilla.

4 VICE-CHAIR PONTANILLA: Thank you. You know, Member
5 Anderson -- Member Johnson brings up a really
6 good point on Item F, and, you know, when the
7 subdivision over here below Wailuku Heights
8 was being developed, you know, we had a lot
9 of, I heard, Realtors paying individuals to
10 stand in line for them to put in their names
11 so that, you know, this Realtor could get that
12 particular piece of property. And I agree
13 with Member Baisa, you know, this is more than
14 what we should be discussing today.

15 I'd just like to remind the Members that
16 now we do have a Workforce Housing Policy in
17 place. We haven't had anybody come up for it
18 until this particular project is with us today
19 to see if this Workforce Housing Policy will
20 work. And there's one provision in the policy
21 itself that we need to review this Workforce
22 Housing Policy every two years. So, you know,
23 we'll have the opportunity to see if this
24 thing works or not and then we have the
25 opportunity to amend it. So thank you, Chair.

1 CHAIR MOLINA: Okay, thank you, Mr. Pontanilla.

2 Member Johnson.

3 COUNCILMEMBER JOHNSON: Yes, and I totally
4 understand where the Members are coming from.
5 I think that because similar condition was
6 attached to the Haliimaile subdivision or that
7 zoning change, a similar condition was
8 attached to Kapalua Mauka, even though, you
9 know, we had been working on the Residential
10 Workforce Housing Policy. For me, it's
11 continuously a learn process, and if the
12 Members and the majority feel, which it
13 appears that they do, that the current
14 conditions are sufficient, and because I don't
15 believe we've had our first annual report
16 at -- I don't think I've seen a report coming
17 from A&B yet to the Council, and I don't think
18 it's been that long for Kapalua Mauka. So I
19 would just -- I would say it's fine, but I
20 just want to, for guidance, I guess, I want to
21 understand where is it in this specific matrix
22 they -- that the condition is stated. And if
23 Staff could assist me, that the condition is
24 stated specifically that the reporting
25 requirement or that the Applicant shall

1 comply. I just need to know which condition
2 that is.

3 MS. NAKATA: Mr. Chair, it would be Condition Number
4 5.

5 CHAIR MOLINA: Five.

6 MS. NAKATA: Five doesn't specify the reporting
7 requirement per se, but it does call out
8 compliance with Chapter 2.96.

9 COUNCILMEMBER JOHNSON: And --

10 CHAIR MOLINA: That would be the Maui Planning
11 Commission -- or the revised Maui Planning
12 Commission Condition 5, which is on page 4 of
13 your matrix, your updated matrix, Members.

14 Am I correct, Staff?

15 COUNCILMEMBER JOHNSON: Uh-huh.

16 CHAIR MOLINA: It does make reference to Chapter
17 2.96 as well in that condition.

18 COUNCILMEMBER JOHNSON: But it just says they shall
19 provide workforce housing, and so I guess the
20 language, then, you know -- I guess for the
21 sake of expediency, it should be clear, shall
22 provide workforce housing and all
23 applicable -- I guess and all applicable
24 reports or all applicable conditions in
25 accordance with Chapter 2.96.

1 CHAIR MOLINA: Okay. Well, hang on, Member Johnson.

2 We have Member Mateo.

3 COUNCILMEMBER MATEO: Chairman, just for
4 clarification, Number 5, as we had approved
5 reads, very -- at the very top of the
6 consensus vote it says, "Shall provide
7 workforce housing in accordance with Chapter
8 2.96, Maui County Code." That in itself
9 requires them to comply with all the
10 principles involved in 2.96.

11 CHAIR MOLINA: Okay. Member Johnson.

12 COUNCILMEMBER JOHNSON: Yeah, and, you know, for me
13 it doesn't. I'm just saying that it's
14 providing the workforce housing in accordance.
15 I would just further define it so that there's
16 no confusion. So -- and just amend it to say
17 "shall provide workforce housing," and what
18 was the language that I used before, Staff?
19 "And comply with all applicable conditions."

20 MS. NAKATA: So is Member Johnson suggesting
21 substituting the phrase "provide workforce
22 housing in accordance" with the phrase,
23 "comply," so it would just "say shall comply
24 with Chapter 2.96"?

25 COUNCILMEMBER JOHNSON: And all applicable

1 conditions. That way it's not just providing
2 the housing itself. It's providing
3 everything.

4 CHAIR MOLINA: So, Member Johnson, with regards to
5 your --

6 COUNCILMEMBER JOHNSON: I would like to actually,
7 you know, if -- because Staff has a copy of
8 this, and because there are some components,
9 if we could just transmit this as a separate
10 document to the Policy Committee underneath
11 the Workforce Housing or Residential Workforce
12 Housing for future consideration.

13 CHAIR MOLINA: Future reference.

14 COUNCILMEMBER JOHNSON: Yeah.

15 CHAIR MOLINA: All right, we'll make a note of that.

16 COUNCILMEMBER JOHNSON: And then that way if we do
17 want to tweak, you know, once we get our first
18 report, and then only at that time --

19 CHAIR MOLINA: So as a template or a guide?

20 COUNCILMEMBER JOHNSON: Yeah, just measure it and
21 see if there's anything that would be more
22 helpful. I'm fine with that.

23 CHAIR MOLINA: Okay. Mr. Mateo, as the subject
24 Committee Chair --

25 COUNCILMEMBER MATEO: I don't have a problem with

1 anything coming to the Policy Committee for
2 clarification, but I think at this point, you
3 know, somehow we're just really missing it
4 because, you know, tomato, tomato, potato,
5 potato, it is -- it is a matter of
6 interpretation, and we just see it
7 differently, but I believe Ms. Johnson's
8 concern in the verbiage, I think it already
9 exists in what we have already supported on
10 Condition Number 5. So it's, I guess, a
11 matter of interpretation and -- because I
12 don't see a difference at this point. I think
13 we're both going in the same direction, using
14 two different vehicles, perhaps. Thank you.

15 CHAIR MOLINA: Thank you, Mr. Mateo. I guess
16 everyone has a different level of comfort, and
17 I thank Member Johnson for at least bringing
18 this proposal for discussion. So we'll go
19 ahead and transmit this document to the Policy
20 Committee for any potential future reference
21 with regards to this matter. So, Members, we
22 shall move on, then.

23 Thank you, Member Johnson. And I know
24 you have some other conditions you want us to
25 consider, but you're still working on those?

1 COUNCILMEMBER JOHNSON: Yeah, and I've had not a
2 whole lot of time --

3 CHAIR MOLINA: We understand, because I --

4 COUNCILMEMBER JOHNSON: -- between yesterday and
5 today.

6 CHAIR MOLINA: The Chair didn't expect to be here
7 today, but at a later point. I guess I don't
8 anticipate final decision making meeting
9 today, the Chair does have to attend to a
10 commitment at 3:30.

11 COUNCILMEMBER JOHNSON: Okay.

12 CHAIR MOLINA: So unless -- maybe Vice-Chair
13 Pontanilla would like to run the proceedings.
14 I don't know what kind of commitments you
15 have, but -- and I don't want to put you on
16 the spot, Mr. Pontanilla, so -- but anyway,
17 we'll see what we can get done in the next
18 hour and a half.

19 COUNCILMEMBER JOHNSON: Mr. Chair, then, can we --
20 you know, and because this is one that I'm
21 really unclear about myself, and because I
22 would like some guidance either from
23 Corporation Counsel or from Staff, is on my
24 Condition Number 1, on October 23rd we
25 received a communication from the Department

1 of Education, and I would like to better
2 understand what that really involves. Because
3 even from my own perspective, I'm not totally
4 clear on what some of the legal changes are
5 that occurred at the State level, and so I
6 guess there was a memorandum Staff pointed out
7 to me that was transmitted.

8 Staff, was that October 23rd, 2007?

9 And -- and if you would indulge me,
10 Mr. Chair, if Staff could just explain to --
11 what those changes are, because I don't
12 know --

13 CHAIR MOLINA: Okay, before I let Staff give the
14 explanation, let me just clarify for the
15 Members, we are on Member Johnson's Number 1,
16 and I'll go ahead and state the proposed
17 condition for the record. "A condition to
18 require construction of a new high school in
19 the Kihei-Makena Community Plan area with
20 classroom capacities in full compliance with
21 State Department of Education standards prior
22 to the issuance of any certificates of
23 occupancy for the subject development."

24 Okay, Staff, you can go ahead and
25 provide the clarification. That is on, I

1 guess, a transmittal received from the
2 Department of Education regarding educational
3 fees.

4 COUNCILMEMBER JOHNSON: And which binder it's in?

5 CHAIR MOLINA: Is this in binder 8 or binder 7?

6 Maybe our Committee Secretary can provide
7 assistance. Do we need a break to find the
8 document?

9 MS. NAKATA: I believe it's in binder 7.

10 CHAIR MOLINA: Binder 7.

11 MS. NAKATA: It should be at the back of it.

12 CHAIR MOLINA: Members, do you need a little time to
13 locate it? Chair can call for a short break.
14 Okay, meeting in recess, two minutes.
15 (Gavel).

16 **RECESS: 2:08 p.m.**

17 **RECONVENE: 2:10 p.m.**

18 CHAIR MOLINA: (Gavel). Recessed Land Use Committee
19 meeting of October 18th, 2007 is now back in
20 session, ten minutes after the hour of 2:00
21 o'clock here on Thursday, November 8th.

22 Members, we were locating a document
23 from the Department of Education, dated
24 October 23rd, 2007. I presume everyone has
25 that document, and we're in the process of

1 having Staff, I guess, describe the letter.

2 I did discuss with Staff during the
3 brief recess about the difficulty Staff may
4 have in, you know, interpreting the Department
5 of Education's response. So if Staff would
6 choose to just give a brief overview of the
7 letter with the contents, but, again, it's
8 difficult to have Staff, you know, speak for
9 the Department of Education.

10 So, Staff, you can go ahead, and then
11 from there, Members, we'll see if you have any
12 questions, and we can call up the Applicant as
13 well to give his comments.

14 MS. NAKATA: Staff would just note that this October
15 23rd response was the result of a Committee
16 request to the DOE asking for information. I
17 believe the first response on the policy
18 regarding class size, which is attached to
19 this letter, was a question for Member
20 Johnson. The second had to do with I guess
21 the applicability of the recent legislation,
22 and it does appear from the second response
23 the DOE may be saying that the contribution --
24 the unexecuted contribution agreement would
25 not be, I guess, applicable in light of the

1 passage of Act 245, and that there will be
2 legislation -- they will be offering
3 legislation next session to propose school
4 impact districts, which they're required to do
5 under Act 245.

6 So the Committee may want to consider a
7 separate condition relating to educational
8 contributions that, rather than referring to
9 an outside agreement, would simply call out
10 the 3,000 per unit with some kind of proviso
11 that should the State pass legislation
12 imposing school impact fees that apply to the
13 project area, then from that point forward
14 Honua`ula would comply with the State
15 requirements.

16 CHAIR MOLINA: Okay, thank you, Staff.

17 Member Johnson.

18 COUNCILMEMBER JOHNSON: Yes, and that was what I was
19 generally concerned about, because, as you
20 know, many times the State passes the
21 legislation, but it doesn't move forward with
22 the -- you know, look at us and our traffic
23 impact fees, you know, I mean, that's -- it's
24 one example of something that is in the law,
25 but has not yet been executed. So I don't

1 want us to get caught in a situation where
2 we're not getting at least some kind of
3 requirement that a contribution be made, so
4 I -- you know, with regard to the way that the
5 current condition is structured, what page is
6 that on, Staff, on the matrix?

7 MS. NAKATA: It's on page 15, and it refers to WCPT
8 Number 4.

9 CHAIR MOLINA: Third column, Members.

10 COUNCILMEMBER JOHNSON: And, Mr. Chair, I think that
11 I'd also like a comment, if possible, from
12 Corporation Counsel, because I guess my other
13 question is that when the State Land Use
14 Commission -- you know, they've imposed
15 conditions. Is that now a moot point, given
16 that the letter that we just received with the
17 other legislative passage of -- I guess it's
18 Act 245, what does that do to that condition?

19 CHAIR MOLINA: Mr. Hopper, are you able to respond
20 to Member Johnson's question?

21 MR. HOPPER: I'd have to read the Act. They
22 probably should have provided for that,
23 though, in the Act, say if there's an existing
24 condition governing school impact fees, how
25 the Act would affect that when it becomes law.

1 So I haven't fully read that Act, I will
2 admit, but --

3 COUNCILMEMBER JOHNSON: Okay, the Act is --
4 actually, I did come across it. It's in the
5 binder. There's a transmittal, Bill for an
6 Act, School Impact Fees, and that is October
7 19th, 2007 in binder number 7. It's, "Please
8 consider the attached document, Act 245
9 relating to education," and so the full Act is
10 actually in our binder as well.

11 So, I don't know, Mr. Chair, if you
12 wants to come back to that one to give
13 Corporation Counsel some type of chance -- an
14 opportunity to review that, but I'm just
15 concerned that if we put a condition in or
16 there is a condition placed in the existing
17 ordinance as it's proposed, that's either
18 unenforceable or refers to a document that
19 will, in all likelihood, not be executed, I
20 just think we should clean it up and take it
21 out, and as was suggested by Staff, perhaps
22 amend the wording to say that if these impact
23 fees and the district impact fees are enacted,
24 a minimum of \$3,000 shall be paid. And I
25 don't know if Mr. Jencks has any comment or

1 not, but I'm happy to entertain any
2 suggestions at this point.

3 CHAIR MOLINA: Sure, thank you, Member Johnson. I
4 see Mr. Jencks standing up to respond.

5 MR. JENCKS: Good afternoon, Members, Mr. Chair.

6 We do have a condition that was placed
7 on the property by the State Land Use
8 Commission to pay a fee to the State
9 Department of Education for schools in steps,
10 one at building permit approval and the second
11 part of the fee at close of escrow on the
12 dwelling unit.

13 That was, as I recall, \$895 per unit.
14 We have volunteered to pay \$3,000 per unit to
15 the Department of Education, and they have
16 transmitted to us a draft agreement for our
17 signature. Subsequent to that, this bill that
18 you were discussing came to the floor.

19 Whether we pay -- go back to the
20 original condition, it still triggers review
21 by the Department of Education. If the new
22 legislation that was passed, by the way,
23 requires scoping work to be done before they
24 can actually levy either fees or get land from
25 the community, the development community.

1 They have a lot of work to do to get there.
2 Either way, we're going to be in compliance
3 with, A, the \$3,000 per unit or the new bill
4 that comes pending -- depending wherever we
5 are in the process.

6 So if -- you know, my recommendation to
7 you would be to say, look, we'll take the
8 \$3,000 per unit, or if that bill passes or is
9 finally put into place, we'll comply with that
10 as well.

11 COUNCILMEMBER JOHNSON: And when you say you comply
12 with that as well, you mean that you'll pay
13 the \$3,000 and then comply in addition?

14 MR. JENCKS: No, we'll do -- we'll do one or the
15 other. We'll either pay the \$3,000 or when
16 they finally implement this law that they
17 passed with the scoping work, et cetera, which
18 is going to be awhile, we'll comply with that
19 as well.

20 COUNCILMEMBER JOHNSON: Okay. So I guess currently,
21 Mr. Chair, the language that's in our existing
22 condition --

23 CHAIR MOLINA: From the Applicant?

24 COUNCILMEMBER JOHNSON: If we -- if we amended that,
25 as Staff suggested, that, you know, you shall

1 be in compliance with the requirements of the
2 Department of Education, but in -- I guess in
3 light of the fact that that is not yet
4 adopted, that you would be willing to pay a
5 minimum of \$3,000?

6 MR. JENCKS: That's correct.

7 COUNCILMEMBER JOHNSON: Okay, Mr. Chair, I really
8 would like to try to put in some language, and
9 I know that in another area, I think it was
10 with regard to traffic impact fees, we put in
11 whichever is greater.

12 CHAIR MOLINA: Right.

13 COUNCILMEMBER JOHNSON: Because if the Department of
14 Education, they haven't collected money on a
15 lot of things. And if currently they're
16 saying only \$895, when you look at current
17 construction costs, that is a drop in the
18 bucket. So I would certainly like to see
19 something that refers to the \$3,000
20 contribution and that it would be no less than
21 \$3,000 per unit.

22 CHAIR MOLINA: Okay. Thank you, Member Johnson.
23 Just for your information, a few weeks back
24 Staff and I had worked on a proposed condition
25 in light of the Applicant's condition, because

1 it definitely does not make any reference to
2 comply with State requirements should Act 245
3 pass, because this legislation is only being
4 talked about yet.

5 Staff, if you could hand out the
6 proposed condition, and if there's no
7 objection, we could work off of that, if you
8 want to -- the Committee would like to massage
9 it and, you know, do what you have to, so be
10 it. So we'll use that as a starting point for
11 now and --

12 COUNCILMEMBER JOHNSON: Thank you, Mr. Chair.

13 CHAIR MOLINA: -- go from there. And thank you for
14 bringing this matter up, Member Johnson.

15 Members, after we deal with this, the
16 Chair wants to take a short break and would
17 like to -- I was going to offer you another
18 recessed date to consider, and we'll give you
19 some time to go look at your calendars.

20 VICE-CHAIR PONTANILLA: Chair.

21 CHAIR MOLINA: I'll go ahead and read the condition
22 into the record. States that Honua`ula
23 Partners LLC, its successors, and permitted
24 assigns shall pay the State Department of
25 Education \$3,000 per dwelling unit prior to

1 issuance of each building permit, provided
2 that should the State pass legislation
3 imposing school impact fees that apply to the
4 project area, Honua`ula Partners LLC, its
5 successors, and permitted assigns shall from
6 that point forward comply -- forward comply
7 with the State requirements. I think maybe
8 that needs to be readjusted. Sorry, Chair
9 didn't have a chance to make a second run at
10 this, but anyway, it's there for
11 consideration.

12 Mr. Jencks? No objections, Members,
13 going to have Mr. Jencks offer his thoughts
14 first on it, and --

15 COUNCIL MEMBERS: No objections.

16 MR. JENCKS: I think it's terrific. Good job.

17 CHAIR MOLINA: Any adjustments in grammar that you
18 can see? I think the Chair can see one that
19 might need a friendly amendment to it. Member
20 Johnson.

21 COUNCILMEMBER JOHNSON: My only thing would be to do
22 what we did in the other case, since
23 Mr. Jencks has so graciously offered the
24 \$3,000 per unit, and we don't know what the
25 other -- I mean, frankly, at this point I

1 don't know if the State really knows what
2 they're doing, because they -- the fees that
3 they're charging, I mean, and that they're not
4 even collecting, it's just unbelievable. But
5 I would say as long as he's willing to do and
6 lock in the \$3,000 per dwelling unit, I would
7 say prior to the issuance of each building
8 permit. And in anticipation that the State
9 may pass legislation imposing school impact
10 fees that apply to the project area,
11 Honua`ula Partners LLC, its successors, and
12 permitted assigns shall pay no less than
13 \$3,000 or shall pay \$3,000 or -- in other
14 words, how do I want to say this?

15 CHAIR MOLINA: We could add that after the word
16 requirements, and pay no less than --

17 COUNCILMEMBER JOHNSON: And pay no -- you know,
18 provided such is no less than \$3,000.

19 CHAIR MOLINA: Okay.

20 COUNCILMEMBER JOHNSON: You know, just so that we
21 mirror what the --

22 CHAIR MOLINA: Reemphasize.

23 COUNCILMEMBER JOHNSON: -- condition was that we
24 had. So that if he's willing to do it, I
25 mean, if the fee is higher than that, I can

1 understand, okay, you know, if he has to pay
2 3,300 or 4,000, but no less than \$3,000 per
3 unit. And then that way we at least know that
4 the DOE is going to get that to help, you
5 know, for I guess the Kihei -- and, of course,
6 do we know, Staff, if this is going to be
7 specifically used in the Kihei area? Because
8 that's the other thing. I know that --

9 MS. NAKATA: I believe that in -- oh, I'm sorry.

10 CHAIR MOLINA: Go ahead, Staff.

11 MS. NAKATA: I believe that in the October 23rd
12 response they say in the bottom of the first
13 page, "We can assure you that the DOE will
14 follow Act 245 requirements and continue
15 spending these funds for schools serving the
16 projects that generate the funds."

17 CHAIR MOLINA: Or I guess we could interpret that as
18 being kept in the South Maui region, then, the
19 schools.

20 COUNCILMEMBER JOHNSON: Yeah, and further,
21 Mr. Chair, it might help us to say, provided
22 that such monies are expended in the area that
23 will be impacted.

24 CHAIR MOLINA: Right, project area. Mr. Victorino,
25 you had a comment as a former Board of

1 Education member?

2 COUNCILMEMBER VICTORINO: Well, you guys, you
3 just -- you just hit the nail on the head,
4 because if you put that, any school that would
5 be impacting on the Project District -- right
6 now the high school doesn't even exist. That
7 money could go to the Lokelani or any of the
8 other schools. You know, so if we intended it
9 to be for the high school, you're not -- this
10 ain't working, you know.

11 Now, I just feel like your answer to
12 this is, again, applicable to whatever the Act
13 242 [sic] ends up with.

14 COUNCILMEMBER JOHNSON: 45.

15 COUNCILMEMBER VICTORINO: Is what -- 245, I should
16 say, is what we will end up with. The problem
17 is we just don't know what that end result
18 will be. So, again, we're taking, as we've
19 done in the past, gone ahead and tried to put
20 something there that we don't know what the
21 other agency will do. And knowing the State,
22 I'm afraid that this will just end up being a
23 white elephant floating around and we'll have
24 money floating in there not going to where we
25 really, really need it.

1 As long as it stays in South Maui, I
2 guess it's okay. I mean, at least it helps
3 South Maui, but will it be for the high
4 school? There's no guarantee.

5 And the other part that I would suggest
6 is, to make it simplified, if the -- if the
7 Department of Education will receive \$3,000
8 per -- and it says per dwelling unit. Now,
9 multi-family dwellings, I mean, you know, if
10 you've got -- those are units, and, again, I'm
11 afraid when you go multi-family dwellings, how
12 many units are we counting? Again, are we
13 counting the 1,400? And I want that 1,400 to
14 stay in the whole picture. That cannot
15 change. I don't care where they're built, so
16 long as the 1,400 stays in the picture, that's
17 the \$3,000, or if greater, what mandated by
18 Act 245. I think that's the kind of language
19 somehow needs to be incorporated in that, sir.
20 Thank you, Mr. Chairman.

21 CHAIR MOLINA: Thank you, Mr. Victorino. The Chair
22 would just offer a concern. I appreciate the
23 intent of the high school, but, you know, we
24 all know how the State works for future
25 schools. You know, they -- they give you a

1 timetable, yeah, in five, ten years it will
2 come up and 20, 30 years later go by. So
3 while they're -- because this money, should
4 this project pass, I believe could be used for
5 existing schools that may have a need, I'm
6 sort of leery about putting in a high school,
7 because if the high school is not built, it
8 locks in that money only for the high school,
9 whereas existing schools that are there may
10 need the money. So I would prefer just, you
11 know, leaving out the high school and just
12 keep -- you know, keeping the appropriate
13 language to assure that these monies will be
14 used for schools in the project area.

15 COUNCILMEMBER VICTORINO: Mr. Chair, may I point out
16 another thing that you want to consider is,
17 under Act 245 I read, Act 245 are dedicated to
18 the complexes of schools serving the area for
19 which the new development occurs. I hate to
20 mention it, but the complex is Wailuku. There
21 is no south -- there is no Kihei complex. So
22 that is another dangerous situation, because
23 technically, by law, if they want to take the
24 money for the complex, the complex --

25 CHAIR MOLINA: Could go to Wailuku.

1 COUNCILMEMBER VICTORINO: -- is Wailuku, not South
2 Maui. So the State themselves makes it very,
3 very difficult to deal with this kind of
4 subject matter, but, you know, we'll try to
5 get some words, main thing it stays in South
6 Maui. I think that's very, very important.

7 CHAIR MOLINA: Yeah, I want that assurance too.

8 Member Pontanilla.

9 VICE-CHAIR PONTANILLA: Thank you. If and when
10 Corporation Counsel does review Act 245, if he
11 can look for those provisions in the
12 particular Act. There was one developer that
13 developed some properties in Kihei that
14 designated funds strictly for South Maui.
15 Maybe we can utilize, you know, the same way.
16 But, again, you know, if Corporation Counsel
17 can review that Act to ensure that, you know,
18 monies -- and complex, I understand as far as
19 the complex, but I think there's two complex
20 for Central Maui, one is for Wailuku that
21 involves Wailuku, Waihee, Wailuku Elementary
22 School, and the other one is Kahului, which
23 involves Maui High School, Kihei, and the
24 elementary schools in Kahului area. So
25 basically, yeah, the complex for South Maui

1 would end up in Kahului. So if Mr. Hopper can
2 review that, give us more clarity. Thank you.

3 CHAIR MOLINA: Okay, thank you, Mr. Pontanilla.

4 COUNCILMEMBER MATEO: Chair.

5 CHAIR MOLINA: Mr. Mateo.

6 COUNCILMEMBER MATEO: Chairman, do we know about
7 whether or not the State has already
8 identified a date for a high school in South
9 Maui? Because you and I not gonna be here
10 when they decide to add it onto their list.

11 CHAIR MOLINA: Yeah. I know there's been
12 discussions in the community about it, at
13 several community meetings, but I don't know
14 if a specific date or target year was arrived
15 at.

16 COUNCILMEMBER MATEO: Even more relevant for us to
17 not, you know, try to cubbyhole it at this
18 point for specifics, just so that we don't get
19 locked into not being having -- or not having
20 access to the funds for a period of years
21 where we could best utilize it in taking care
22 of all the schools that currently exist in
23 their -- in South Maui at this point.

24 VICE-CHAIR PONTANILLA: Chairman.

25 CHAIR MOLINA: Thank you, Mr. Mateo. That's a good

1 point.

2 Before I recognize you, Mr. Pontanilla,
3 I would, again, yeah, recommend and reiterate
4 we leave out high school. Maybe we could
5 incorporate some of Member Johnson's language
6 to assure that, you know, if -- should Act 245
7 or whatever State Act passes, that it's no
8 less than \$3,000, and possibly insert language
9 to reemphasize that the money be used for
10 South Maui schools, South Maui public schools,
11 and not, you know, the complex itself, yeah.
12 So -- but I -- at this point we don't know for
13 sure who has jurisdiction. If Act 245 goes,
14 then, you know, we don't know what will be on
15 the mind of the State. They could potentially
16 take that money and put it in another school
17 outside of South Maui. But at least from the
18 Council's perspective, they will know that we
19 want this money to be kept in South Maui,
20 which I hope that they will take as higher
21 priority.

22 Mr. Pontanilla.

23 VICE-CHAIR PONTANILLA: Thank you. Maybe friendly
24 amendment. Rather than project area, maybe
25 Community Planned area?

1 CHAIR MOLINA: Okay. Why don't we do this, Members.
2 Why don't we just go take a break and,
3 Members, if you want to incorporate some
4 additional language into this condition, we'll
5 give Staff time to put together this amended
6 condition, or proposed condition, and when we
7 come back we can decide on voting on this.

8 So with that being said, Members, why
9 don't we take a break and return at 2:45.

10 Meeting in recess. (Gavel).

11 **RECESS: 2:33 p.m.**

12 **RECONVENE: 2:49 p.m.**

13 CHAIR MOLINA: (Gavel). The recessed Land Use
14 Committee meeting of October 18th, 2007 is now
15 back in session. Thank you very much for that
16 break, Members.

17 Staff is still currently typing up the
18 proposals to the condition that I submitted to
19 you. While she's doing that, I'd like to ask
20 for, Members, your consideration of a recessed
21 date of Tuesday, November 13th, 5:00 p.m.
22 right here in the Chambers after the Policy
23 Committee meeting. I've spoken to Mr. Mateo,
24 the Policy Committee Chairman. He does not
25 anticipate a meeting going past 5:00, so, we

1 hope, but -- but -- again, we could -- we
2 could open up at 5:00 and then take a break
3 and come back at 6:00, or if you would like,
4 just go straight -- maybe 6:00 o'clock or
5 5:30, like we did the last time, after a
6 Policy meeting, we could consider that option.
7 What is the feel of the Members at this point?
8 Member Johnson.

9 COUNCILMEMBER JOHNSON: Is there any chance that we
10 could -- you know, what's Thursday's schedule
11 looking like?

12 CHAIR MOLINA: Thursday of next week?

13 COUNCILMEMBER JOHNSON: Yes.

14 CHAIR MOLINA: The problem is today's the 8th, and
15 our max day is the 13th. Thursday would be
16 the 15th, if I'm correct. That's seven days,
17 yeah, so we have to -- our maximum is five
18 days. Hang on.

19 COUNCILMEMBER JOHNSON: And my only reason is
20 because we start with Planning and we have
21 quite a few, you know, things on there. That
22 takes us from early morning until late into
23 the evening, and what I was trying to do is if
24 there's some way that we could just reconvene
25 and then keep the issue alive.

1 CHAIR MOLINA: Oh, yeah.

2 COUNCILMEMBER JOHNSON: Maybe discuss a small issue,
3 and then do that for a limited period of time,
4 and then go over onto Thursday.

5 CHAIR MOLINA: Sure. Thank you for bringing that
6 up.

7 COUNCILMEMBER JOHNSON: That would be much easier,
8 because otherwise I know not every Member is
9 on our Planning Committee, but particularly
10 for myself, I have family obligations that
11 would make it very, very hard for me to do the
12 whole day.

13 CHAIR MOLINA: The Chair did consider as a plan B
14 option of, you know, considering another short
15 day as well, we could go two or three hours on
16 early Thursday night -- Tuesday night, then
17 consider a short meeting after my regularly
18 Land Use Committee meeting on the 14th, or we
19 could look at the 15th, which is a Thursday.

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

21 CHAIR MOLINA: And possibly a longer day. Excuse
22 me, Staff?

23 MS. NAKATA: On Thursday, the Monday Committee
24 meetings have been moved because of the Monday
25 holiday.

1 CHAIR MOLINA: Okay.

2 MS. NAKATA: So the morning and afternoon slots are
3 already taken.

4 CHAIR MOLINA: And I believe Member Pontanilla would
5 have that afternoon slot. So there are your
6 options. Well, let's first consider Tuesday,
7 and then we'll discuss the other potential
8 days at that Tuesday meeting. So do I have
9 agreement?

10 And, Members, I ask next week is a
11 regularly scheduled Committee week, and I'm
12 hopeful we can come to a decision, and if you
13 can clear your calendars, if at all possible,
14 to be here. I do intend to draw the line on
15 decision making, whether we receive all
16 conditions or not, because it's high time in
17 the Chair's opinion. How much more
18 information can we ask for or conditions, I
19 think -- I think we've reached the saturation
20 point. This matter is already unprecedented
21 in terms of the amount of meetings and
22 recesses and amount of information being
23 requested and extracted from the Applicant.

24 I had somebody stop me on the street the
25 other day and ask me are you going to ask the

1 Applicant for his shoe size and his personal
2 habits? Obviously the person was sort of
3 making light of the issue, but sometimes there
4 is truth to joking, yeah. So, again, the
5 Chair's just giving his opinion, his comments,
6 and would like you to make yourselves
7 available. Obviously I would like to have a
8 full nine-Member body come decision making
9 next week, if at all possible, so, please, if
10 you could clear your calendar for any of those
11 three days that we may consider for
12 decision -- final decision making for the
13 Committee.

14 Member Baisa, can I get your comments?

15 COUNCILMEMBER BAISA: Yeah, so, Chair, I'm trying to
16 synthesize what you've said. If we do this
17 meeting on Tuesday afternoon, and assume we
18 start at 5:00 or 5:30, you're planning to do a
19 couple of hours or are you planning to do a
20 long meeting and come to decision making that
21 evening, and same thing if it happens on
22 Wednesday or Thursday?

23 CHAIR MOLINA: Well, let's start first with Tuesday.
24 In general the Chair's ready to go as long as
25 you can go with me. So I think a minimum of

1 at least three hours, if we can get to the
2 decision making point. I understand we do
3 have a couple of other conditions being
4 considered by Member Anderson as well as
5 Member Johnson, and we -- this is the last
6 major condition at this point as far as the
7 Chair is concerned. The Condition 13, that we
8 had discussed the other day.

9 COUNCILMEMBER BAISA: But what I'm trying to wrestle
10 with, Chair, is that evening is the Kula
11 Community Association, which I like to attend,
12 but it doesn't start until 7:00, and if it's a
13 few hours, well, we can handle it. If it's
14 going to go all night, then of course I'll
15 miss that. And I don't mind missing it if
16 we're going to do decision making, but I do
17 mind missing it if we're going to sit here and
18 talk about all kinds of things that I think
19 are beginning to take too much time. We need
20 to get this done. I'm with you.

21 CHAIR MOLINA: Yeah, thank you, Member Baisa, and --
22 well, the Chair either way is going to draw
23 the line next week, whether it be decision
24 making Tuesday night, Wednesday or Thursday,
25 because I, too, have -- I think, in my

1 opinion, we've reached the saturation point.
2 If the Members are willing to stay and make a
3 final decision Tuesday night, so be it. I'm
4 ready any one of those three days to call for
5 a decision. Any other comments? Well, let me
6 just go down the line.

7 COUNCILMEMBER VICTORINO: Yeah, Mr. Chair.

8 CHAIR MOLINA: We've heard from Member Johnson.
9 Member Victorino.

10 COUNCILMEMBER VICTORINO: Yeah, Mr. Chair, you know,
11 if Tuesday, I will make myself available from
12 5:00 on, and, again, if you want to on
13 Wednesday, but I too concur, if we can come to
14 some reasonable conclusion and decide by
15 Wednesday. Because, again, Thursday we're
16 moving all the Monday meetings, and I'm
17 already moving a number of other meetings that
18 have been moved. It's just a crazy day, and
19 Friday already loaded up with the Council
20 meeting and afternoon, just to catch up with
21 all the things I've missed in the last couple
22 of weeks. I think all of our calendars have
23 been shifted and shifted, and I think people
24 are getting tired of the shifts too. Sorry.
25 So I go with Tuesday and Wednesday if that's

1 what the body will agree to.

2 CHAIR MOLINA: Thank you, Mr. Victorino, and I share
3 in your pain. We -- I have at least one
4 person that's been trying to make an
5 appointment with me I've had to reschedule for
6 the fourth time.

7 COUNCIL MEMBERS: I have five.

8 CHAIR MOLINA: You have five person -- or persons,
9 so we're trying to -- and that is why the
10 Chair wants to wrap this up. There are other
11 issues in this community that we as elected
12 officials need to get to, and we need to find
13 some kind of resolution to this at this point.
14 As the old saying goes, nuff already, yeah?

15 Mr. Pontanilla, any comments?

16 VICE-CHAIR PONTANILLA: Tuesday is fine with me.

17 CHAIR MOLINA: Okay, you're fine for Tuesday. And
18 decision making?

19 VICE-CHAIR PONTANILLA: If we're ready to make
20 decisions on Tuesday, fine.

21 CHAIR MOLINA: Okay, thank you for your comments.
22 Mr. Medeiros, any comments?

23 COUNCILMEMBER MEDEIROS: You plan on starting on
24 Tuesday at 5:30 or 5:00?

25 CHAIR MOLINA: Well, what is the -- I initially had

1 presented 5:00 o'clock as an option. The
2 Chair is open to going to 5:30 or whatever the
3 majority wants, but I think 5:30, we did that
4 the last time after a Policy Committee
5 meeting, and 5:30 seemed to work for the
6 Members that day.

7 COUNCILMEMBER MEDEIROS: Okay.

8 CHAIR MOLINA: Is there another consideration you
9 want us --

10 COUNCILMEMBER MEDEIROS: No, I'll be available from
11 5:30 on.

12 CHAIR MOLINA: Okay.

13 COUNCILMEMBER MEDEIROS: On Tuesday.

14 CHAIR MOLINA: Very good. Any other comments on the
15 Tuesday session? So for now we'll settle on
16 Tuesday, and whatever happens after Tuesday
17 night, should we not get to a decision making
18 on that night, then we will look at Wednesday
19 or possibly Thursday night, or late afternoon.

20 COUNCILMEMBER VICTORINO: Mr. Chair.

21 COUNCILMEMBER BAISA: Chair.

22 CHAIR MOLINA: Mr. Victorino.

23 COUNCILMEMBER VICTORINO: Also I'd like you to, as
24 much -- and you cannot -- and I realize you
25 cannot control, but I would hope that any more

1 conditions can be brought forth before we meet
2 on Tuesday because I, like many Members, would
3 like to at least review them before we get
4 something thrown in front of us. I know some
5 Members have -- and they haven't had the time
6 to get it done, but I'm asking those Members
7 if you can please bring them forward so that
8 at least we have some time to review it, not
9 get a condition, then recess to go review it
10 and then come back.

11 So that's the only thing that I would
12 ask also, that if we're going to make a
13 decision on Tuesday and/or Wednesday that
14 whatever conditions, yes, I know there might
15 be some floor ones, but overall let's bring
16 them up and get them on the table so we can
17 address them and understand them so that when
18 we make a decision, it's clear in our mind.

19 CHAIR MOLINA: Thank you very much for your comments
20 on that matter. I think the Chair expressed
21 his comments as well related to that, because
22 I don't like getting blind sided with any
23 potential conditions that may be very complex
24 that would need some time to review, and when
25 you're slammed on the floor with a condition

1 or several conditions that are very complex,
2 it's very difficult to make a decision, at
3 least in my mind. And if I don't understand
4 the ramifications of the condition, I tend to
5 vote no.

6 And also it goes along the lines of
7 common courtesy to each other as colleagues,
8 and as I stated from way before via emails and
9 I've mentioned it at meetings, Members, if you
10 have conditions, as a courtesy to your
11 colleagues, let us all review it ahead of
12 time. I don't think there should be nothing
13 to hide, so just bring it out front, let us
14 review, that way we can ask questions and make
15 a better informed decision on that condition
16 as well. So, anyway.

17 COUNCILMEMBER MEDEIROS: Mr. Chair.

18 CHAIR MOLINA: Mr. Medeiros.

19 COUNCILMEMBER MEDEIROS: Yeah, I just wanted to
20 verify, so if we're going to go 5:30 on
21 Tuesday, November 13th, and then you have your
22 regular Land Use on the 14th?

23 CHAIR MOLINA: Yes, and I will look at -- if we do
24 go Wednesday, I will look at the same time,
25 5:30 on Wednesday, if we go past Tuesday.

1 COUNCILMEMBER MEDEIROS: Other than the 1:30?

2 CHAIR MOLINA: Yeah, 1:30 is our -- we have three
3 different items that we'll address.

4 COUNCILMEMBER MEDEIROS: So you may consider --

5 CHAIR MOLINA: I'll probably --

6 COUNCILMEMBER MEDEIROS: -- 5:30 on that day too, if
7 need, too?

8 CHAIR MOLINA: And the Chair doesn't intend to go
9 past --

10 COUNCILMEMBER MEDEIROS: Night.

11 CHAIR MOLINA: Well, I'm going to -- for my regular
12 Land Use meeting, hopefully we can conclude by
13 4:30 or 4:00 that day. Thank you,
14 Mr. Medeiros.

15 COUNCILMEMBER MEDEIROS: Thank you.

16 CHAIR MOLINA: Member Johnson, followed by Member
17 Baisa.

18 COUNCILMEMBER JOHNSON: Yes, and I just wanted to
19 note that I absolutely cannot miss the first
20 meeting for the West Maui Highway Task Force,
21 because that's with the Department of
22 Transportation, and I made a long-term
23 commitment, and that would be from 6:00 to
24 8:00 p.m. on Wednesday. So I could -- I can
25 clear my calendar for Thursday, and I'll make

1 whatever arrangements I have to make to, you
2 know, go for however long I have to go on
3 Tuesday, but I would really prefer -- because
4 this is really important, and we've all worked
5 very hard on this, not to go on Wednesday.

6 And I just wanted the Members to know that I
7 think I was the only one that submitted a list
8 of questions.

9 CHAIR MOLINA: And the Chair thanks you for that.

10 COUNCILMEMBER JOHNSON: And while they weren't
11 completely fleshed out, nobody can say that I
12 didn't let you know early enough what I was
13 concerned about.

14 CHAIR MOLINA: And the Chair wants to publicly thank
15 you, Member Johnson, for that consideration.
16 Because I think it helped all of us. We had a
17 chance to preview it and make some comments,
18 and I appreciate the courtesy that you showed
19 to the Chair, as well as the Committee Staff
20 and your colleagues, so I do want to commend
21 you for that, Member Johnson.

22 COUNCILMEMBER JOHNSON: Thank you.

23 CHAIR MOLINA: Member Baisa.

24 COUNCILMEMBER BAISA: Mr. Chair, I have a procedural
25 question. You know, for many of us -- well,

1 at least three of us this is our first go at
2 trying to craft a whole amazing number of
3 conditions on a project, and so I'm wondering,
4 if we were to vote on this project in this
5 coming meeting that we're talking about and
6 make a decision, and if that were a positive
7 decision, then this recommendation from this
8 Committee goes to full Council, right?

9 CHAIR MOLINA: That is correct.

10 COUNCILMEMBER BAISA: And it will receive two
11 hearings?

12 CHAIR MOLINA: Yes.

13 COUNCILMEMBER BAISA: Two readings, right?

14 CHAIR MOLINA: Uh-huh.

15 COUNCILMEMBER BAISA: Two more opportunities. Now,
16 during those meetings, and when those are
17 brought up for first and second reading, would
18 there still be an opportunity to tweak
19 conditions?

20 CHAIR MOLINA: I believe you can, but it depends on
21 how you're going to tweak the conditions. If
22 it's substantive enough where it may have to
23 go back to Committee, that could happen. So
24 depending on what you want to tweak, I believe
25 procedurally you would have to consider

1 recommitting it back to Committee, if that is
2 the will of the majority of the body.

3 Maybe I can get some further --
4 Mr. Hopper or Staff, can you give some
5 additional comment on Member Baisa's question?

6 MS. NAKATA: Staff would just suggest that, to the
7 extent possible, the tweaking be done while
8 the matter is still before Committee.
9 Subsequent to that and once it's reported out
10 at first reading, yes, it is possible to do
11 floor amendments, subject to the caveats that
12 the Chair stated, but it is quite a cumbersome
13 process and quite time consuming, and we have
14 been told by the Council Chair in the past
15 that the distinct preference is try to get
16 Committee work done at the Committee level if
17 possible.

18 Beyond first reading it, again, becomes
19 more difficult because of the requirement that
20 a unilateral agreement be recorded with the
21 Bureau prior to the bill considered at second
22 reading. So if changes are made to the
23 conditions, once the agreement is recorded,
24 then steps will need to be taken to cancel or
25 supersede that prior recorded UA. So it

1 does -- it does involve more steps at that
2 point.

3 COUNCILMEMBER BAISA: Thank you. I think that's
4 very important that we understand that. Thank
5 you.

6 CHAIR MOLINA: Thank you. So if this matter passes
7 out of this Committee, it is basically the
8 property of the Chair, and it is at his
9 discretion when to schedule it on his agenda.
10 So -- and that's a good question to ask, so at
11 least you as one of three freshman Members and
12 the rest of the general public who's observing
13 on this gets a clear understanding of
14 procedurally what could happen. And there's
15 some people that think that if this thing
16 passes out of Committee, that's it. It's far
17 from it. So it's just one step -- one of many
18 steps along the way.

19 So, anyway, Members, so we shall set
20 5:30 p.m., November 13th.

21 COUNCILMEMBER BAISA: 5:30, Tuesday.

22 CHAIR MOLINA: Tuesday, and so with that being said,
23 Staff, are you prepared to share with us the
24 revised proposed condition related to the
25 educational fees?

1 MS. NAKATA: Yes, Mr. Chair.

2 CHAIR MOLINA: Would you go ahead and read that for
3 us.

4 MS. NAKATA: And Staff would just note, there is a
5 typographical error in the date of
6 distribution at the bottom. It should read
7 11/8.

8 "That Honua`ula Partners LLC, its
9 successors, and permitted assigns shall pay
10 the State Department of Education \$3,000 per
11 dwelling unit upon issuance of each building
12 permit to be used to the extent possible for
13 schools serving the Kihei-Makena Community
14 Plan area, provided that should the State pass
15 legislation imposing school impact fees that
16 apply to the Project District, Honua`ula
17 Partners LLC, its successors, and permitted
18 assigns shall from that point forward comply
19 with the State requirements or contribute
20 \$3,000 per dwelling unit, whichever is
21 greater."

22 CHAIR MOLINA: Members, comments? Mr. Victorino.

23 COUNCILMEMBER VICTORINO: I like this very much.

24 Can we move on this?

25 CHAIR MOLINA: Sure. We won't do a consensus for

1 you, Mr. Victorino.

2 COUNCILMEMBER VICTORINO: Not even consensus, I'd
3 like to make sure that it's in there. That's
4 beautiful. Thank you.

5 CHAIR MOLINA: Okay, Mr. Victorino, any -- Chair
6 will entertain a motion, then to --

7 COUNCILMEMBER VICTORINO: So moved.

8 COUNCILMEMBER BAISA: Second.

9 CHAIR MOLINA: Okay, moved by Member Victorino.
10 Seconded by Member Baisa. Discussion? Seeing
11 none, all those in favor of the proposed
12 educational contribution condition, signify by
13 saying "aye."

14 COUNCIL MEMBERS: Aye.

15 CHAIR MOLINA: All those opposed?

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1 at this point?

2 COUNCILMEMBER BAISA: Can you help us find it,
3 please?

4 CHAIR MOLINA: Oh, yes. It's in your -- it should
5 be in your 8th binder, the very last document.

6 COUNCILMEMBER VICTORINO: Yeah, the last one.

7 CHAIR MOLINA: Yeah, very last one.

8 COUNCILMEMBER VICTORINO: Number 8.

9 CHAIR MOLINA: It's attached to an email
10 correspondence from Kai Markell, and it's
11 OHA's letter to SHPD regarding the Honua`ula
12 Change of Zoning application. I don't know if
13 you've had a chance to fully review this.

14 Staff, we received this yesterday, am I
15 correct? At what time was the receipt?
16 Actually, I take that back, we actually
17 received it this morning. So the email was
18 transmitted on the 7th, but when we actually
19 received it and transmitted it, it was this
20 morning. So I don't know if you've had the
21 time to look it over. Would you like a few
22 minutes to look it over, Members --

23 COUNCILMEMBER BAISA: Please.

24 CHAIR MOLINA: -- and then we can do some Q and A on
25 it? Okay, Members, let's recess until -- is

1 3:15 enough time, Members? Eight minutes, ten
2 minutes. Okay, meeting in recess until 3:15.
3 (Gavel).

4 **RECESS: 3:08 p.m.**

5 **RECONVENE: 3:18 p.m.**

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

9 Members, you've had time to review the
10 letter, and any comments with regards to the
11 letter from OHA to SHPD as it relates to this
12 application? Start with Member Baisa,
13 followed by Member Johnson.

14 COUNCILMEMBER BAISA: Thank you, Chair. Had the
15 opportunity to review the letter, and I think
16 it's very clear that OHA is instructing the
17 State Historic Preservation folks that they
18 need to be doing some things. I don't see
19 this so much as an instruction to us as it is
20 to them, and that we would need to include
21 them as we move forward, but that's what I got
22 out of it.

23 CHAIR MOLINA: Thank you, Member Baisa. And I think
24 Mr. Sinoto the other day kind of emphasized
25 the issue of SHPD being --

1 COUNCILMEMBER BAISA: Derelict.

2 CHAIR MOLINA: Yeah, well, I don't know about
3 derelict, but sort of the challenged and
4 behind on a lot of things, which before I
5 recognize Member Johnson, which segues -- or
6 lights my fire to ask Deputy Director Suyama a
7 question.

8 With regards to Maui applications, have
9 you gotten word as to how much Maui
10 applications are pending before SHPD for
11 comments?

12 MS. SUYAMA: Because the Department, the County of
13 Maui has been having problems in getting
14 responses out of State Historic Preservation
15 Division, we have been working with the
16 Governor's office to try to streamline the
17 situation, the review process. And trying to
18 focus it -- some -- some of these reviews can
19 be done on the local level rather than every
20 application going to the State Historic
21 Preservation Division, and maybe they should
22 concentrate on the more -- the broader or the
23 more complex applications, rather than every
24 building permit that comes in or every minor
25 application that comes in.

1 And because of this, we're trying to
2 work out a system that would work between both
3 the County and the State. The State sent us a
4 recent list of all the projects that are still
5 pending -- that are Maui projects that are
6 still pending with the State Historic
7 Preservation Division, and there were about
8 approximately 333 projects listed.

9 So what we've been doing through all the
10 different departments is going through the
11 list, identifying all the County agencies, you
12 know, projects, and determining whether we
13 still need comments from State Historic
14 Preservation. If not, then the understanding
15 would be that because of the rules of State
16 Historic Preservation, they have specific
17 deadlines in which to respond to a lot of
18 these comments -- request for comments. What
19 we're saying is that if you have not
20 responded, then based upon those deadlines,
21 you basically have concurred with the reports
22 or with the assessment. That's how their
23 rules read, that if they do not respond within
24 the set deadlines, many of which are 30 or 45
25 days, then you concur with the assessment.

1 And we're basically saying that that's
2 what our position will be, is that you're
3 concurring with the assessments that have been
4 made, or if there was an archeological
5 inventory survey or recognizance survey that
6 was submitted, you concur with those results,
7 the same thing in terms of a preservation or
8 mitigation plan, if you have not met the
9 deadline, you concur with the results of the
10 reports.

11 There are some projects that we feel
12 regardless of deadlines that we still need
13 comments from, and those are the ones that we
14 are going to still request from the State
15 Historic Preservation, regardless of the
16 deadline, that -- for them to comment, and
17 hopefully by trying to get -- pare down the
18 333 projects, they'll get to the ones that are
19 more significant.

20 CHAIR MOLINA: Okay, thank you, Director. That's a
21 staggering number, 330 plus. My goodness.
22 Member Johnson.

23 COUNCILMEMBER JOHNSON: Years ago I had an
24 opportunity to, you know, just have an
25 extended conversation with the person that was

1 in charge of SHPD at that time, and one of the
2 biggest frustrations I think for the agency
3 overall has been lack of staffing, lack of
4 money. You know, the frustration with people
5 that have tremendous skill levels actually
6 never even getting into the field to observe
7 what is going on, and feeling that the
8 inadequacy of their reports was almost
9 criminal.

10 And, I mean, this individual was very
11 sincere and said I did not sign on for this
12 type of job. I signed on because I believed
13 that I have the expertise and the skill to be
14 able to do my job, but her frustration was
15 that when it came down to it, in terms of
16 writing the reports, in terms of how many
17 people she had to do secretarial or doing some
18 of the data gathering that was needed, the
19 support staff wasn't there.

20 And so like so many things at the State
21 level, Mr. Chair, so many times the State pays
22 lip service to putting the money into the
23 areas where we really need the expertise. And
24 DLNR is another one of those areas,
25 enforcement officers.

1 So, you know, for me, I just share that
2 with you because I think, you know, you can
3 point the finger and you can point blame, but
4 ultimately what has the support been at the
5 State level for the staff that have that
6 expertise and have that talent? And so if a
7 backlog exists, then the financial resources
8 as well as the human resources need to be
9 placed in an area, if that is where the State
10 feels emphasis is needed. And I know they've
11 started doing that with Department of Land and
12 Natural Resources, so hopefully they will do
13 the same thing with State Historic
14 Preservation Division.

15 I might add, too, that one of the
16 problems we're experiencing right now is with
17 the State project which involves the bypass,
18 because now there's additional work that
19 needed to be done because there was a lack or
20 inadequate information on the initial data
21 gathering. So that is a problem, and then
22 what does it do? Everything just backs up at
23 the State level. So, you know, if you're
24 going to do it right, do it right from the
25 beginning.

1 Mr. Chair, I did have an opportunity
2 earlier to review the letter, and I guess my
3 question would be to Corporation Counsel,
4 because, you know, I mean, when I read the
5 ordinance, basically the three entities that
6 may comment are State Historic Preservation
7 Division, OHA, and also Department of Land and
8 Natural Resources. Is there anything,
9 Mr. Hopper, that would prevent the Applicant
10 at the time when they transmit the information
11 to State Historic Preservation Division from
12 sending a copy to the other two entities as a
13 courtesy?

14 CHAIR MOLINA: Mr. Hopper?

15 MR. HOPPER: I'm not certain that's a legal
16 question. It -- prevent them from sending a
17 copy to the other agencies?

18 COUNCILMEMBER JOHNSON: Is there anything, you know,
19 I mean, I just read -- there's not all the
20 procedural components listed in our ordinance,
21 but for me, if I were a developer and I wanted
22 to get a comment as quickly as possible,
23 instead of just sending to one agency and then
24 making the assumption that that is going to be
25 forwarded on, could I not as a developer send

1 to Department of Land and Natural Resources,
2 as well as OHA, in addition to State Historic
3 Preservation Division?

4 MR. HOPPER: I'm sure a developer could probably
5 send a letter to whoever they would want. As
6 far as legally, for the reasons -- the reasons
7 why the developer sent what they did at the
8 times they did for their reviews, that's going
9 to be something the developer would have to
10 explain. I can't explain that. As far as
11 legally, you have your Code, you have the SHPD
12 rules, and their deadlines, their review
13 criteria, and then the contact from OHA and
14 things like that. And those are the legal
15 issues that I see, but as far as the prudence
16 of taking one course of action or another
17 during the review, that's for the developer to
18 explain for you.

19 COUNCILMEMBER JOHNSON: Okay, but there's nothing
20 that specifically prohibits them in our Code
21 or any other ordinance that you know of or
22 State statute from sending, as a courtesy,
23 those copies to those other agencies?

24 MR. HOPPER: Nothing that I know of. I mean, I -- I
25 think you can send -- whether or not those

1 agencies will review them or review them in a
2 timely manner, I don't know. You know,
3 certainly with the staff issues that's a
4 consideration, but as far as sending a review
5 plan to an entity, I'm sure that you could
6 always send it. It doesn't necessarily mean
7 it's going to get reviewed, or it might get
8 kicked right back to you if it's not in
9 accordance with their rules, but without
10 knowing everything about the particular
11 situation, I'd say generally, yeah, you could
12 probably send it for review. As to why that
13 wasn't -- if that wasn't done, that would be
14 for the developer to explain, though, again.

15 COUNCILMEMBER JOHNSON: And the reason I ask that,
16 Mr. Chair, is that so many times government is
17 criticized for our slowness to act, and yet if
18 I were the Applicant, if there is no harm in
19 sending to an agency that ultimately will be
20 reviewing whatever the documents are, I think
21 just from a courtesy perspective to say, I
22 have transmitted on such and such a date this
23 document. Here is a courtesy copy of what was
24 transmitted for your information. At least,
25 then, the entity, which in this case OHA's

1 commenting, Department of Land and Natural
2 Resources, at least they would be aware that
3 at some point in time they should anticipate
4 some kind of communication from State Historic
5 Preservation Division, or that they would be
6 reviewing this. I don't know if Ms. Suyama
7 has something to offer.

8 MS. SUYAMA: I do. In the normal course of an
9 application coming in, the Department
10 automatically sends copies to OHA, DLNR, and
11 State Historic Preservation for review. This
12 application in 2000 was sent to OHA. In 2000
13 their response was no comments. In 2007 they
14 have a different position, and which you have
15 to realize, seven years have gone by. This is
16 a different Administration. In 2000, when it
17 was under Colin Kippen, who was the then
18 administrator, their only comment was to say
19 we have no comments on this application, and
20 it was left at that.

21 State Historic Preservation, on the
22 other hand, did have more substantial comments
23 from their agency about the adequacy of the
24 reports. However, you know, in more recent
25 years, OHA has I guess gotten better staffed,

1 so they're now providing more comprehensive
2 comments than they used to provide to us in
3 the year 2000.

4 So I'm thinking that's what's happening
5 now, in 2007 they're giving you more detailed
6 information. They're also questioning why
7 certain reviews were not done, but these
8 documents were originally given to OHA at that
9 time when they first came in for their
10 application. Things have changed since that
11 time. There have been some subsequent
12 documents that have been formulated by the
13 Applicant, and in that sense, some of those
14 documents may not have been sent through the
15 normal review process. Because once an
16 application is transmitted to Council, we
17 don't do further transmittal to the agencies,
18 because it's already been closed. The
19 Department as well as the Commission has made
20 their recommendation to Council, and normally
21 at that point we inform the Applicant if
22 there's additional updating of information,
23 you should get those information to the
24 agencies and getting the agency comments back.

25 And I think in this case, because the

1 original comments from OHA was no comments, I
2 think most people would think that OHA has no
3 interest in the project, and, therefore, we
4 would not do the subsequent, you know,
5 information going back to all these agencies
6 once you put a no comment to the Department.
7 We normally will send it back to agencies that
8 had substantial, you know, comments to do or,
9 you know, concerns that were issued, but in
10 this case there was no indication that OHA had
11 any issues, you know, with the application.

12 COUNCILMEMBER JOHNSON: And I think that that is
13 where, Mr. Chair, part of the problem comes
14 in, because if you read the requirements
15 underneath our ordinance, it's very specific.
16 I'm not going to hold Ms. Suyama, you know,
17 accountable for that, because, of course,
18 whoever from the Planning Department reviews
19 the adequacy of whatever is being transmitted
20 at that point in time, I think that's where
21 the subject of some, you know, I guess
22 interpretation is now occurring.

23 I don't feel that it was adequate
24 either, because just as OHA's commenting the
25 information that they received was not

1 adequate, they in essence are chastising State
2 Historic Preservation Division for basically
3 saying you're not giving us the information,
4 and yet we're only just getting this
5 information now.

6 So, I mean, we mean we can point fingers
7 all over the place if we want to, but I think
8 the general process is that we need to be very
9 careful that when any County agency is
10 reviewing this information, that the
11 information that is actually required is
12 there, and that's where I think the problem
13 comes in. And it has to be -- I mean, this
14 obviously is not the first time that this has
15 happened, where an application has taken a
16 long period of time.

17 So the Applicant just as a precautionary
18 measure, I think, should be any time they're
19 communicating new information and they know
20 it's not going to be retransmitted from the
21 Planning Department, which Ms. Suyama has made
22 very clear, they should then take it upon
23 themselves to transmit -- if they want a
24 response or if they want a greater level of
25 awareness for the agencies that they want

1 comments from, then they should also seek to
2 transmit that information.

3 So that's what I kind of get out of
4 this. And I know that State Historic
5 Preservation Division is being put on the hot
6 seat by OHA, and I'm not saying that it isn't
7 warranted, but I think in this particular
8 situation the Applicant also contributed to
9 the lack of information, and because we've
10 been pulling, trying to extract the
11 information, very, very laborious process on
12 our part too, I think that is part of the
13 problem, Mr. Chair.

14 So I -- I understand OHA's comments, but
15 I also share their frustration, not only with
16 SHPD, but I share it because of what the
17 Applicant has done in basically not providing
18 the information that is clearly requested, and
19 they had every opportunity to do so. Thank
20 you.

21 CHAIR MOLINA: Okay, thank you for your comments,
22 Member Johnson.

23 COUNCILMEMBER MEDEIROS: Mr. Chair.

24 CHAIR MOLINA: Mr. Medeiros, questions regarding the
25 letter? And, Members, after Mr. Medeiros's

1 line of questioning, if there's no objections,
2 the Chair would like to withhold additional
3 questions on the document until Tuesday,
4 because I know time is getting short for some
5 Members, so Chair is very aware of that.

6 Mr. Medeiros.

7 COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yes,
8 I can appreciate Member Johnson's perspective
9 on this. I have a little different
10 perspective, in that reading this letter,
11 clearly OHA is not happy with SHPD for their
12 lack of providing information to OHA. And I
13 know Ms. Suyama said that, you know, OHA kind
14 of didn't have any comments, but I'm thinking
15 if OHA was waiting for a review by SHPD and
16 the transmittal of that information and review
17 to OHA, OHA would have had nothing to pretty
18 much make comments on.

19 And I think this letter corroborates
20 what the Applicant -- or the developer has
21 been saying to us, that they provided what was
22 required, and it was for agencies such as SHPD
23 to continue that information on to other
24 agencies, which by this letter is apparent
25 that didn't happen. So I think, you know,

1 OHA -- SHPD seems to have a major part in the
2 breakdown of this process, because they didn't
3 continue to provide the information as was
4 required of their agency.

5 So I look at this letter, and I'm glad
6 we were able to review this letter from OHA,
7 and know that, you know, OHA is not happy
8 either, but, yeah, I just wanted to comment
9 that I think this just corroborates what the
10 developer said, that, you know, they provided
11 the information and it didn't go forward after
12 SHPD.

13 So thank you, Mr. Chair, for bringing
14 forth this letter for our review. Mahalo.

15 CHAIR MOLINA: Thank you for your comments,
16 Mr. Medeiros. I think it further corroborates
17 what Mr. Sinoto had expressed with regards to
18 SHPD, just hearing Deputy Director Suyama
19 mention that there's 330 other surveys and
20 applications awaiting a response from SHPD, so
21 very good.

22 Members, move on, one last thing. Well,
23 I don't want to call it homework, but on page
24 18 -- yeah, just like a teacher. On page 18
25 of the matrix, we won't get into detailed

1 discussion today, but the Applicant is
2 proposing a condition regarding the
3 conservation easement. As we all know, a
4 couple of days ago Member Anderson proposed a
5 conservation easement with the acreage. She
6 had wanted us to consider, but the motion was
7 withdrawn. In the meantime the Applicant has
8 submitted a -- I don't want to call it -- is
9 it a counter proposal, I guess? So however
10 you want to characterize it, but I just wanted
11 to let you know it is rather lengthy, two
12 pages, pages 18 and 19 on your third column of
13 your updated matrix, the November 6th matrix.

14 So I'd like you guys to go ahead and
15 look at the condition and come back with
16 questions if you have any on Tuesday. We've
17 just spoken of giving the Members time to
18 review any proposed condition, I think this
19 sets a good example for that. So go take a
20 look at it over the weekend, if you have some
21 time.

22 And then Member Pontanilla had requested
23 a minor consideration regarding Condition 12
24 on page 8 regarding golf.

25 Mr. Pontanilla, you have the floor, and

1 I believe it has to do with the percentage for
2 fees.

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

4 CHAIR MOLINA: You have the floor.

5 VICE-CHAIR PONTANILLA: Thank you. Members, as
6 Ms. Nakata pass out the current South Maui
7 golf rates, I just want to make a friendly
8 amendment -- or do an amendment to that
9 particular item. I think it's D.

10 CHAIR MOLINA: D, Members, is the last paragraph of
11 the condition in the far right column, which
12 is under the consensus or vote, and we did, I
13 believe, vote on that condition, so Member
14 Pontanilla is proposing an amendment.

15 Member Pontanilla.

16 VICE-CHAIR PONTANILLA: Yes, Chairman, I'd like to
17 amend the 50 percent to 40 percent of the
18 average market rate. And, Members, the
19 handout that you got just now, my Staff looked
20 at the green fees for the various golf course
21 in South Maui, and as you can see, the fees
22 that they charge the Maui residents is
23 basically 40 percent of their normal green
24 fees for play.

25 So, Chairman, I would like to amend the

1 50 percent to 40 percent at this time.

2 COUNCILMEMBER VICTORINO: Second.

3 CHAIR MOLINA: Okay, motion -- okay, there's a
4 motion made by Member Pontanilla to amend the
5 50 percent to 40 percent, and a second has
6 been made by Member Victorino. Any additional
7 discussion, Mr. Pontanilla, before I recognize
8 Member Johnson?

9 VICE-CHAIR PONTANILLA: Yes, this would make it
10 comparable for this new golf course in regards
11 to the rates that are presently being assessed
12 to the Maui residents at the four golf course
13 in South Maui.

14 CHAIR MOLINA: So in essence this is a proposal to,
15 I guess, provide further relief for Maui
16 residents?

17 VICE-CHAIR PONTANILLA: Yes. 50 percent would bring
18 it up to maybe, in some cases, \$10 higher than
19 what we see today --

20 CHAIR MOLINA: Okay.

21 VICE-CHAIR PONTANILLA: -- in the 50 percent.

22 CHAIR MOLINA: Thank you, Mr. Pontanilla.

23 Member Johnson.

24 COUNCILMEMBER JOHNSON: Just a point of information,
25 because we originally took a vote on this

1 particular item, is it appropriate under
2 Robert's Rules to ask for reconsideration of
3 this particular item before we make the
4 amendment?

5 CHAIR MOLINA: Well, let's confer with Corp.
6 Counsel. Being -- because, you know, it is
7 just a condition and not the whole bill
8 itself, but that's a good question to ask,
9 Member Johnson.

10 Mr. Hopper?

11 MR. HOPPER: A motion for reconsideration would not
12 be proper. That has to be moved at the same
13 meeting or at a later meeting. However, there
14 is a motion to amend something previously
15 adopted. Again, I would defer to your Chair
16 on the issue of rules, but as the rules -- as
17 the rules as I read them state, a motion to
18 reconsider would not be appropriate as
19 understood in Robert's, as I'm familiar with
20 them. However, if it's been modified by
21 Council rule or something, then I'm not as
22 familiar as your Chair would be with that.

23 CHAIR MOLINA: Okay.

24 COUNCILMEMBER JOHNSON: Thank you, Mr. Chair. I
25 just wanted to make sure that if there was any

1 criticism lurking, that at least we address it
2 at this point. And so I'm -- I have no
3 problem with this, because I think that what
4 it does is it further, I guess, reinforces
5 what the actual rates would be, and because
6 it's actually less, you know, it would be a
7 greater benefit, I think, you know, to the
8 local players. Thank you.

9 CHAIR MOLINA: Thank you, Member Johnson.

10 Member Medeiros.

11 COUNCILMEMBER MEDEIROS: Yeah, I have a question, if
12 you can answer it, Mr. Chairman, otherwise,
13 maybe Member Pontanilla.

14 CHAIR MOLINA: If it's golf related, I'll yield to
15 Member Pontanilla.

16 COUNCILMEMBER MEDEIROS: Yeah, when we're discussing
17 the condition, I know it's constantly
18 expressed about being sure that there was also
19 cart fees mentioned. Now, so, green fees
20 includes cart fees in all of these golf
21 courses?

22 CHAIR MOLINA: Mr. Pontanilla?

23 VICE-CHAIR PONTANILLA: Yes, it does.

24 COUNCILMEMBER MEDEIROS: Okay. With that response,
25 I'm fine with that.

1 VICE-CHAIR PONTANILLA: Yeah, the only golf course
2 that have green fees and golf fees separately
3 is our municipal golf course.

4 COUNCILMEMBER MEDEIROS: Okay. Mahalo,
5 Mr. Chairman.

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

7 Any further discussion on the proposed
8 amendment to Condition Number 12? Seeing
9 none, all those in favor, signify by saying
10 "aye."

11 COUNCIL MEMBERS: Aye.

12 CHAIR MOLINA: All those opposed?

13 **VOTE: AYES: Councilmembers Baisa,**
14 **Johnson, Medeiros, Victorino,**
15 **Vice-Chair Pontanilla, and Chair**
16 **Molina.**

17 **NOES: None.**

18 **EXC.: Councilmembers Anderson, Hokama,**
19 **and Mateo**

20 **ABSTAIN: None.**

21 **ABSENT: None.**

22 **MOTION CARRIED.**

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

25 CHAIR MOLINA: Thank you, the Chair will mark it

1 six-zero, three excusals, Members Mateo,
2 Anderson, and Hokama, Condition 12 has been
3 amended.

4 Very good, Members. With that being
5 said, the Chair will call for the recess. We
6 shall reconvene on Tuesday, November 13th, at
7 5:30 p.m., and we will go from there and see
8 how far we can take it, but, again, the Chair
9 reiterates decision making for that night or
10 possibly another night that week, but I do not
11 intend to go past that week for a final
12 decision on this project.

13 So what's on the agenda for that day for
14 discussion, Tuesday night I would like to
15 focus our attention on Condition 13, as well
16 as the proposal from Mr. Jencks, and any other
17 considerations for conditions.

18 And if maybe Member Anderson's Staff can
19 get the word from the Chair that, if
20 possible -- I know she mentioned that she did
21 have some conditions to consider, if those can
22 be forwarded to the Committee or, as a
23 courtesy, to all the Members so we can have a
24 chance to review it, so that way we don't get
25 bogged down and -- you know, with any extended

1 discussion because we did not have a chance to
2 at least review it and adjust it, so just as a
3 courtesy for everyone, if that may be
4 possible. So, Staff, if we can get the word
5 out.

6 Member Baisa, you have a comment?

7 COUNCILMEMBER BAISA: Yes, Chair, I was just going
8 to ask also if there were anything
9 substantive, if we could have it before the
10 weekend, it would be really nice. It's a long
11 weekend --

12 CHAIR MOLINA: Sure.

13 COUNCILMEMBER BAISA: -- and we may find some time
14 to actually look at it and digest it or
15 discuss it or look things up before the
16 meeting.

17 CHAIR MOLINA: Yes, especially --

18 COUNCILMEMBER BAISA: It's very difficult when we
19 get it at the meeting.

20 CHAIR MOLINA: That's right, and especially big or
21 complex condition proposals. So, yeah, the
22 Chair totally echoes your sentiments.

23 Member Johnson.

24 COUNCILMEMBER JOHNSON: Yes, and Ms. Nakata and I
25 were working on the one condition, I guess it

1 was incorporating both Ms. Suyama's -- I guess
2 it would be -- for the construction traffic to
3 try to reduce that during the construction
4 period, and then incorporating a suggestion
5 that Mr. Jencks had, so I'm working with
6 Ms. Nakata on that, and then I will try and do
7 the other research that I have to if I have
8 any, I guess, further amend -- well, I've
9 already stated all the amendments that I had
10 intended to make, but it was just with regard
11 to those specific items that I had talked to
12 the Council Members previously. Thank you.

13 CHAIR MOLINA: And thank you, Member Johnson, for
14 working with Staff.

15 So, Members, with that being said, the
16 Chair, again, thanks all of you who made major
17 adjustments in your schedule today to be here
18 in order for us to have this meeting. So
19 mahalo for all of your participation.

20 Members, this meeting is in recess until
21 Tuesday, November 13th, 5:30 p.m. (Gavel).

22 **RECESS:** 3:44 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 6th day of November, 2007, in Honolulu, Hawaii.



Jessica R. Perry, SSR NO. 404