

LAND USE COMMITTEE
Council of the County of Maui

MINUTES

November 13, 2007

Council Chamber

RECONVENE: 5:32 p.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member
Councilmember Danny A. Mateo, Member
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember G. Riki Hokama, Member

STAFF: Tammy M. Frias, Committee Secretary
Carla M. Nakata, Legislative Attorney
Jock Yamaguchi, Executive Assistant to Councilmember Michelle Anderson

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

OTHERS: Charles Jencks, Owner's Representative, Honua`ula Partners, LLC
Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc. (Applicant's entitlement consultant)
John Ford, Program Director/Senior Biologist, SWCA Environmental Consultants
(Applicant's flora consultant)
Aki Sinoto, Aki Sinoto Consulting (Applicant's archaeologist)
B. Martin Luna, Esq., Carlsmith Ball, LLP (Applicant's attorney)
Hinano Rodrigues, Cultural Historian, Historic Preservation Division, State
Department of Land and Natural Resources
Jenny Pickett, Maui Archaeologist, Historic Preservation Division, State
Department of Land and Natural Resources
Lee Altenberg
Joyclynn Costa
Kimokeo Kapahulehua
Additional attendees (20)

PRESS: Claudine San Nicolas, *The Maui News*
Brian Perry, *The Maui News*

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

Akaku--Maui County Community Television, Inc.

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting for October 18th, 2007, is now back in session. Good evening, Members.

COUNCILMEMBER BAISA Good evening,

CHAIR MOLINA: It is 5:32. . .what is it. . .Tuesday, November 13th. Thank you for assisting the Chair in at least remembering the date here for this evening. It's not too often we get to meet during the night, but we're here, and we've got some work to do tonight.

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

CHAIR MOLINA: We're, of course, on Land Use Committee Item 38. For the record we have in attendance Members Molina, Mateo, Baisa, Johnson, Medeiros, and Victorino, and also I see Mr. Pontanilla just walking into the room. And we have, is Chairman Hokama here tonight, Staff? Is he, will he be available? Have we been, what is the notification from Chairman Hokama?

MS. FRIAS: Chair Hokama is not available.

CHAIR MOLINA: For the whole evening?

MS. FRIAS: Yes.

CHAIR MOLINA: Okay. So noted for the record we have eight Members in attendance.

COUNCILMEMBER ANDERSON: And I'm here.

CHAIR MOLINA: Did I, I'm sorry, Michelle. I'm sorry, we also have Member Anderson here. All right. Members, and from Staff we have Analyst Carla Nakata as well as Committee Secretary Tammy Frias, and from the Corporation Counsel's office we have Mr. Mike Hopper.

Members, we have a couple of proposals from, well, one from Member Anderson, and we also have some from Member Johnson. And the Committee received a couple of other considerations from Members Mateo, Medeiros, and Victorino. So we'll try to see how far we can get tonight. The Chair's intent is to go to until at least eight p.m., unless the Committee is ready to go any further, but we'll cross that road when we get to it. Again, let me reiterate the Chair's intent is to reach resolution on this matter this week. If we don't complete our vote on this matter tonight, then we will look at other days of this week to conduct the vote, but we are very close, and I

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

believe we need to bring resolution to this long-standing matter once and for all. And for the record, we have met, at this point, I was given some information by the Committee Secretary. I believe we have listed here 24 meetings which includes the public hearings and recessed meetings, 24 estimated over nearly 80 hours; am I correct, Committee Secretary? And that's just this year. This does not include 2006.

MS. FRIAS: Yes, Mr. Chair.

CHAIR MOLINA: Okay. Thank you very much, Ms. Frias. So just letting you know and the public know how much time we have spent on this very large application. So let's start first, Members, on a consideration from Member Anderson which is related to Maui Planning Commission Condition 13, which can be found in your, oh, by the way you do have an updated matrix, Members, which I believe was given to you, distributed to you last week. So looking at condition, I mean page, Condition 13 is on Page 9 of your new matrix. Member Anderson has given us a revised consideration and, again, for the record, this condition I believe, or something that was similar to what is being proposed here tonight was previously discussed on October 25th. We spent roughly two and a half hours on it, and just prior to the vote of that condition Member Anderson made a request to withdraw the motion to consider this condition.

So the Chair would like to proceed in this fashion. With this condition, Member Anderson, I'll allow you to read the revised condition in its entirety. And I note you have a three-and-a-half page attachment for your rational for this. Due to time constraints and the fact that the Committee Members did hear the rational at the prior meeting on October 25th, I'm going to ask you to condense your reason for this condition since we've already spent nearly two and a half hours on it, because we also have other considerations to consider for this application as well. So with that being said, Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. Yeah, I did spend some time on this actually back in August as well as whenever, whenever I last brought this up. I would like to just point out that my Staff did some research also and the Committee has actually spent a total of 31 meetings on this application. January, February, January, March, June, July and October of '06 in the previous term. So nobody can say we haven't made a concerted, if not futile, attempt to get information.

I do have some things to pass out on this condition, Mr. Chairman. I was requested by Member Baisa to provide some information regarding some of the conservation organizations that could possibly manage the 100 acres for this Conservation Easement. So if I could maybe get some help --

CHAIR MOLINA: Okay. We'll have Staff assist you.

COUNCILMEMBER ANDERSON: --getting these passed out while I'm yakking here. That's, I'm sorry, but I just got this request today, so we've been trying to put this together. The information I'm passing out, I wasn't able to contact all of them, because I only had today to do it, and we

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

had meetings today, but I have information on Maui Cultural Lands, so I'll be passing those out, I'm sorry, Carla. The, the condition that I passed out on Friday to the Members is basically the same condition, maybe, Jock, you can help them and pass this out. It's basically the same condition, Mr. Chairman, that I had previously proposed except that everything that's highlighted in yellow are additions that was made to the condition based on comments that were made at our last meeting as well as, as well as advice that I received from our Deputy Planning Director Colleen Suyama. And if I can, Mr. Chair, I think for the benefit of those people who are listening I should at least read the condition--

CHAIR MOLINA: Go ahead, Member Anderson.

COUNCILMEMBER ANDERSON: --if you have no objection to that. It's Conservation Easement Condition that, and I'm not going to use all these acronyms. I'm just going to say Wailea 670, its successors and permitted assigns, shall convey a perpetual Conservation Easement as established by Hawaii Revised Statutes, Chapter 198, entitled "Native Hawaiian Biological and Cultural Preserve", for the preservation of critical Native Hawaiian habitat and significant historic sites located on the 110 acres of the southern one-sixth of the subject property. The specific coordinates of the Conservation Easement shall be, and then I'm not going to read the coordinates. And I'm sorry, but I don't have my original one that I had the amendment on which proposes to attach a map so that the map shows exactly where the coordinates are, and that would be attached at that point after the coordinates.

The scope of this Conservation Easement shall be set forth in an agreement between Wailea 670/Honua'ula, and the County of Maui that shall include:

- A commitment from Wailea 670/Honua'ula, its successors and permitted assigns, to protect and preserve this area which provides critical habitat for the endangered native Hawaiian low level dry land forest that survives on this a'ala lava substrate, and the listed and candidate Federal endangered species that survive on this property such as, but not limited to, Wiliwili, Awikiwiki, Nehe, Maiapilo, Akoko; I'm not reading the scientific names because I can't pronounce them, I barely can do the Hawaiian names; and Naio, and native insects such as the Hawaiian bees of the Hyaleaus genus, the Blackburn Sphinx Moth, Pueo and the hoary, and the Hawaiian hoary bat, and contains significant historic sites worthy of preservation, restoration, and interpretation for public education and enrichment.
- This area also includes the historic sites of a Native Hawaiian pre-contact settlement that contains remnants of a rare ancient stepping stone trail, possibly a segment of the Piilani Trail. This settlement connects geographically to the pre-contact sites in the coastal area below and provides the necessary link for preservation and interpretation of the ancient ahupua'a settlement pattern.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

- That Wailea 670/Honua'ula, its successors and permitted assigns, shall agree to confine use of the property to activities consistent with the purpose and intent of the Conservation Easement and the protection and preservation of the a'a substrate.
- That any activity on, or use of, the property which is consistent with, or detrimental to, the purpose and intent of this Conservation Easement shall be expressly prohibited.
- That Wailea 670/Honua'ula, its successors and permitted assigns, shall be prohibited from, from development in this area, the entirety of which is critical habitat, other than the provision of fencing, trails, and structures for the maintenance of the habitat, in accordance to a "Critical Habitat Plan." The plan shall be developed in coordination with the County of Maui and groups and organizations which may include: Maui Nui Botanical Garden, the Native Hawaiian Plant Society, North Kona Dryland Forest Working Group, the U.S. Geological Survey Biological Resources Division, as well as biologists who have published peer-reviewed research on native Hawaiian species. The group shall work with cultural land preservations such as Maui Cultural Lands and Maui Coastal Land Trust and native Hawaiian Groups.

Members, this article that I passed out Restoring Hawaii's Native Dry Forest speaks specifically about the North Kona Dryland Forest Working Group.

- That the Conservation Easement on the critical habitat area shall be held by an appropriate land trust organization such as the Nature Conservancy, Trust for Public Lands, Maui Coastal Land Trust or Maui Cultural Lands. The Conservation Easement holder and the property owner(s) shall be required to allow access to charitable 501(c)(3) organizations on Maui dedicated to the preservation of native plants to help restore and perpetuate native species and engage in needed research activities. The Conservation Easement holder and other groups with legitimate activities shall have the right to enter the property at reasonable times to monitor the condition of the plants and habitat lands and review compliance with the conditions of the Conservation Easement on the property. These organizations shall have the right to enter the property at reasonable times to enforce compliance with, or otherwise exercise its rights under this Conservation Easement. These organizations may not, however, unreasonably interfere with the owner's use and quiet enjoyment of the property.
- That the Conservation Easement holder and the property owner(s) shall commit to allowing the exercise of customarily and traditionally exercised rights of Native Hawaiians as set-forth in Section 7 of the Constitution of the State of Hawaii and by the Hawaii Supreme Court in *PASH versus Hawaii County Planning Commission*, 79 Hawaii 425-903, page [sic] two [sic] 1246 (1995) certification denied, 517 U.S. 1163 (1996).

That the Conservation Easement holder and the property owner(s) shall provide and manage open public access to the Conservation Easement for public visitation and education.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

That Wailea 670/Honua'ula, and its successors shall be allowed to receive all tax benefits allowable under current laws for the Conservation Easement placed on the property.

Mr. Chair, before I continue, I move to amend the main motion with this condition.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Okay. It's been moved by Member Anderson, seconded by Member Johnson. Okay, Member Anderson, the Chair will give you a couple minutes to go ahead and touch on the rationale for this condition once again and if you could highlight the additions that you have made to the condition. Go ahead.

COUNCILMEMBER ANDERSON: Mr. Chair, you, you're just going to give people the time to read it? I mean I just read it.

CHAIR MOLINA: Oh, okay. No, I, I noticed you had attached your rationale for it, so...

COUNCILMEMBER ANDERSON: Oh, I was going to go through that but, you know, I would like to, we, at the last meeting I unfortunately was not here. I was home sick, but I was able to watch the meeting and there was discussion on the letter that OHA had sent to State Historic Preservation. And I, I note that there were comments made by various Members and reported in *The Maui News* that the gist of the letter that these Members derived from the contents was that State Historic Preservation Office was at fault for the applicant not going forward with the historic preservation review process. And I don't believe that to be true. The, the letter contained a lot more than that. It actually was, actually stated very clearly by OHA that they felt all 29 sites that so far have been surveyed or at least designated within the survey should be preserved and that they were very disturbed that the surveys that have so far been presented do not call for Criteria E as significant determination for only eight sites that they determined are going to be saved. And, and the reason they're concerned about that is because under Criteria E, OHA has the right to weigh in on how these sites are going to be handled.

So I have had discussions with the Maui Office of State Historic Preservation and we do have staff members from that office in the audience tonight. And I would very much appreciate if they could come forward for some questions and be allowed to weigh in on this very important matter.

CHAIR MOLINA: Okay. Thank you, Member Anderson. At a, maybe at a later point, Member Anderson. For now, I want to open the floor to the other Members to give comment on this proposal.

COUNCILMEMBER ANDERSON: Well, if you're not going to allow that then I would like to maybe go through some of the justification for the condition as I made the motion.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. I'll give you a few, a couple of minutes to go through the justification. I know you read the attachment into the record at the last meeting, so if you just want to highlight the...

COUNCILMEMBER ANDERSON: Well, not everybody was here at the last meeting, Mr. Chairman. I just want to note, and I won't read the whole thing, but I will just go through in a summary fashion. That our Change in Zoning application requires the identification of environmentally sensitive areas, habitat and botanical features including exceptional trees, and a baseline study and a preservation/mitigation plan. Unfortunately, the study that was done, the complete study that was done by Dr. Altenberg was never sent out for review by U.S. Corps of Engineers, or the United States Fish and Wildlife Service, or DLNR. The study that was sent out for their review back in 2000 was a completely inadequate study substantiated by comments by many people in the botanical scientific community. Those letters were passed out at previous meetings.

Additionally, in our community plan it says that we are supposed to, one of the objectives and policies which we're supposed to be complying with in a Change in Zoning application it's a criteria for approval that the Council is legally obligated to meet, one of the policies says that exceptional trees or groves of trees that have historic or cultural value represent an important community resource or are exceptional by reason of age, rarity, location, size, aesthetic quality, or endemic qualities should, shall be saved and incorporated into the landscape plans of subdivisions. We've seen plenty of documentation and, you know, beautiful pictures showing the ancient wiliwili forest. These trees are hundreds of years old, and I will pass this down so that Members can be reminded of what we are asking to, we are being asked to destroy.

I won't go through the various, the various, I don't know how to say it, statements that further substantiate the importance of this critical habitat. I, I will like, would like to mention that of this dry land forest ecosystem there is only 5 percent of it left in all the State of Hawaii. It makes, it makes it a critical habitat for that reason alone, Mr. Chairman. Not only the fact that it lies on a lava flow which has protected it all these years from invasive species, from destruction by cattle and other ungulates. And that's why this is such a pristine habitat because nature preserved it with the last lava flow on Maui. And so that's one of the reasons I think that we need to be very serious about allowing its destruction.

As far as the cultural sites, Chapter 6E, Hawaii Revised Statutes, you know, the whole purpose is to promote the use and conservation of historic properties for that the education, inspiration, pleasure and enrichment of the citizens of Hawaii by articulating a review process for projects requiring the approval of a land use change or other entitlement use. That's right out of the Administrative Rules for the historic preservation process.

We are entirely within our rights and, in fact, obligated under our Change in Zoning application to have an approved preservation/mitigation plan in the application for us to look at so that we know what sites are intended for approval. That has not been afforded us nor has it been afforded State Historic or the Office of Hawaiian Affairs. So under Chapter 6E, any decision making body has the right, the governing body of any political subdivision may provide special

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

condition or restrictions that may include appropriate and reasonable control of the use or appearance of adjacent or associated private property within the public view for the protection, enhancement, preservation, and use of historic sites. I'm not going to go over the, again, the Change in Zoning application requirement. I've already done that.

Under cultural resources in our community plan again, Members, we're obligated under our criteria of approval to make sure that all the policies and objectives of the community plan have been appropriately met. Under our community plan, it says to preserve, protect, and restore significant historic cultural sites. To encourage and protect traditional mauka and makai accesses, cultural practices, and rural lifestyles. That we should protect those areas, structures, and elements that are a significant and functional part of Hawaii's ethnic and cultural heritage. To preserve and restore historical roads and paths as cultural resources, and require such resources to be available to the public. To establish cultural parks and heritage corridors for visitation and education, and to establish cultural educational programs to perpetuate Hawaiian and other ethnic heritage.

Mr. Chairman, these justifications I think are all legally based and present us with an obligation. This is an opportunity, a once in a lifetime opportunity we have to preserve this area not only for the people who will be living there and enjoying it, but for everybody in Maui County and for all future generations, and especially the keiki o ka'aina of Hawaiian heritage who would have an opportunity to learn about their ancestral past. I've passed out to Members copies of information from the Maui Cultural Lands. I think a picture tells a thousand words and this article on what they've done in Honokowai Valley as well as the pictures from their website says it all. This is the way to treat our antiquities of Hawaiian ancestry, and I'm hoping that the Members can see the value in this in, in presenting us with this opportunity with this project to be able to put forward a cultural and botanical heritage park that everybody can enjoy into the future. Thank you for the time, Chairman.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Committee Members, the floor is now open for comments. Let me ask first I think, Member Baisa, you had requested the additional information, before I recognize Member Johnson.

COUNCILMEMBER BAISA: Yes, Mr. Molina. I had asked if it was okay if we could, actually not okay, I would like to see the Form 990 for 2006 for any of the organizations that are mentioned as possible stewards for this very, very important piece of land because of what it entails. I think that as due diligence you look at the Form 990 which should be filed every year. It gives you a lot of information about the organization, and about its assets, and how it spends its money and, you know, its activities, and provides legal standing for that organization. I also had asked if we could please have a list of the current board of directors for each organization so that we would also know who the responsible people are, because we've had representatives, but we have no way of knowing the entire makeup of these organizations. And because we are giving a tremendous responsibility, you know, as I read this condition it tells me that whoever this organization is, and please don't get me wrong I'm not questioning the integrity of any of the organizations. I just think that as Council Members it's our job to be sure that when we give

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

anybody this kind of a job that this is an organization that we've done our due diligence on, and we're very comfortable in knowing that they're going to be around and will take this responsibility very seriously and administer these properties appropriately. And so that's all that I was asking for, and I realize that time may have been short. I, I did, I do my homework on weekends so I sent the request out on the weekend, and I guess, you know, not everybody sits around with their computer like I do. So may have looked at it this morning, so we don't have enough of it, but I still think it's an important thing for us to look at not only for us but whoever else is going to be involved in making the decision as to who will have this responsibility.

CHAIR MOLINA: Okay. Thank you, Member Baisa, and I think it's only prudent for us to know who makes up these organizations as well because of the seriousness of the responsibility. And before I recognize Member Johnson I do want to thank Member Anderson for submitting this adjusted condition or proposal on Thursday, November 8. So thank you, Member Anderson. Member Johnson?

COUNCILMEMBER JOHNSON: Yes, and, and I want to thank also Ms. Anderson for bringing this information out. I think that at our last meeting I was a little frustrated as some of the other Members were that if everything in an ideal world had taken place as it perhaps should have and State Historic Preservation Division, OHA, and also the Department of Land and Natural Resources, and any other entities who should have commented on a preservation plan did not have what they believed was an adequate preservation plan under the requirement that is very clearly outlined in the application. So I think it gives us a certain amount of frustration when we're being asked to I guess look at all these things, and then make recommendations.

The reason that I am supporting Ms. Anderson's recommendation is largely because of the very things that were raised in OHA's letter. We do not have the ability, I am not an archaeologist. I don't have that kind of expertise to be able to make those types of judgments. State Historic Preservation Division as I noted last time it's been plagued for years with shortfall, and manpower, and all kinds of other things. So for me we're the ultimate stewards, if you will, in terms of crafting conditions that will at least allow the maximum amount of preservation on that land. If we don't believe that the applicant has done an adequate job, then the only thing we can do is err on the side of caution. And to me it's inappropriate to integrate a golf course with an educational area. And if you look at Mr. Lindsey's photographs, and if you look at the articles you don't see, you know, public links going through the middle of his preservation project and that's with very good reason. That those two particular components they're not compatible, and I don't believe it's respectful. Apart from the preservation of the plants and the animals and the habitat I think you also have to look at what is the purpose and intent for preservation of an area? If we're looking at something that we're going to hand down as a legacy, and it's a trade-off, many times between approval of a development, and then on the other hand looking at intensification of use, utilizing resources that will no longer ever be available to future generations, and even locating some of the housing now outside the project, it's trying to strike a balance. And where I believe we are really the, I guess the ultimate stewards of this area and the ultimate decision makers as to what we're going to try to preserve for future generations, that sometimes involves making tough decisions. And that's why I think while this may seem as

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

onerous condition, it may seem like something that is unacceptable to the developer, if all the homework had been done, if we had everything drafted, if OHA had commented on the plans as they were required by law this condition might have been modified, because we would then know where all the cultural sites are, but we don't know that. And so, for me, I believe it is incumbent upon us to always err on the side of caution, and if this area is preserved it will provide a wonderful opportunity, and it will provide the time that OHA, that Na Kupuna O Maui, that many of the cultural advisors, and even some of our. . .(change tape, Side 1A). . .really concerned with the survival of endangered species it will provide that time. And if a plan comes forward at a future time where it could accommodate perhaps on part of it some type of modified development or maybe some buffer zone of some sort, I believe that that plan could also be brought forward at a later time, but right now in the absence of that, Mr. Chair, I believe that it is really important for us to really respect the community, respect OHA's wishes, and certainly respect the cultural integrity of this area. And if that means preservation of it, then I think that is what we have to do.

So I'm pleased that we're going to have some of the development outside of the Wailea 670 Project District, and as a result of that I think that that has also freed up some space for housing not to have to be built within this project and I believe it's important for us to do this. So I wholeheartedly support this, and I look forward to receiving reports in the future from Na Kupuna, from the various groups that will be overseeing this project. And I really believe that the condition is, with all respect, to not only us that's here and the Hawaiians who, you know, we've, I guess we've lost so much, and they've lost so much, but for future generations. Because what will there be in the future if we don't take these bold steps now?

So I ask other Members, even if they have concerns or reservations, please just think what is it that we're going to leave for future generations, because it is really important, and they won't ever be able, once this is built upon. This is an asset that will be lost forever. So I, I applaud Member Anderson, and I ask other Members to please support this condition. Thank you.

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

COUNCILMEMBER MATEO: Chairman, thank, thank you very much. And I too, I too recognize the efforts by Ms. Anderson, and I, I would like to provide comment at this point prior to another motion. And, Mr. Chair, I believe Ms. Johnson was quite clear when she stated that we are not archaeologists, and I think a good amount of our discussion in, in regards to the 110 acres has been exactly that. It's been certain lead agencies have not had the opportunity to either review the material or to provide in-depth comment in, in relations to the significance of this particular area. And I think it's important for us to allow these entities the opportunity to provide comment. And the importance of the 110 acres at this point is items that had been referenced that the entire area is significant, or the entire area could be significant, but in essence we really do not know. We know that some of the area is, is, is significant, but is it all the 110 acres?

My preference would be to allow OHA and to allow the different entities, the County Cultural Resource Commission, the Office of Hawaiian Affairs, as well as the State Historic Preservation

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

Division that opportunity. They are the professionals. They are those who know. They need to come on property, they need to assess, they need to tell us what is significant. And I would be a lot more comfortable in having them coming to us after their review and say that perhaps the entire 110 acres is significant, or 50 acres is significant, or 25, whatever the number is, but I would like them to tell us what is based on their expertise and based on their understanding on what it is that we need to do to preserve. There is no doubt that we must take whatever steps we need to take to assure that culturally significant sites are in fact preserved. And I think that will be accomplished when these entities tell us what is actually significant, and what need, and what should or should not be preserved.

I think that's an important component in us addressing the entire significance of this area. And with that being said, Mr. Chair, I also would like to throw out for the, the Committee's consideration, and this would be, this would be to, this would be a substitute of what Ms. Anderson is proposing. And the intent of that is to hopefully simplify the process and attempt to take all of the components that was shared with Ms. Anderson and the other Committee Members by virtually attempting to simplify it. And with that, this would be the substitute motion. And, Mr. Chair, it would read "That Honua'ula Partners, LLC and its successors and permitted assigns, shall not begin any construction within an area of approximately 200 acres at the southern portion of Project District 9, until a permanent cultural plan is developed by Honua'ula Partners in conjunction with the County, the County Cultural Resource Commission, and the Office of Hawaiian Affairs and approved by the State Historic Preservation Division. The Cultural Plan shall meet the requirements of all applicable State and County regulations relating to the preservation of cultural resources."

And, Mr. Chair, I, I reference the approximate 200 acres because the actual number for the southern portion was 190 acres, but upon review by OHA, by DLNR, and, and the other entities, you know, they will hopefully tell us what that number should be. It could be 50, it could be the whole 110 acres, it could even be more than that. So my preference, Mr. Chair, is to submit this as substitute language on, on Ms. Anderson's proposal.

CHAIR MOLINA: Okay. Thank you. So just so we get it straight, so you're proposing this as a motion to amend and substitute Member Anderson's language with your language? Okay. Is there a second?

COUNCILMEMBER BAISA: Second.

CHAIR MOLINA: Okay. It's been seconded by Member Baisa. So any discussion on the proposed amendment? Mr. Mateo, additional discussion?

COUNCILMEMBER MATEO: Chairman, once again it was not to take away or to detract. I think it, it simplifies our process in being able to take a look at the requirements based on conditions that we are imposing. And I think it allows the entities that we had indicated had not had the opportunity to comment; had not had the opportunity to review information; had not had the opportunity, as we heard on the telephone by Trustee Mossman, he had not seen the site nor was

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

provided additional information. So I really think this is just the opportunity to allow them the chance to do their due diligence, and then provide the backup information to us as a body. So I...

CHAIR MOLINA: Okay. So, okay, so you're expanding it from basically 110 acres to 90 acres to make the review inclusive with the involvement of SHPD and OHA?

COUNCILMEMBER MATEO: Yeah, actually, Chairman, the, the acreage involved, the actual number I believe in the southern portion is 190 acres. I just, I just --

CHAIR MOLINA: Rounded it --

COUNCILMEMBER MATEO: --I just figured 200.

CHAIR MOLINA: --off to 200. Okay. Thank you. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Chairman. You know, I appreciate Member Mateo's attempt here. Unfortunately, it does not include any preservation for the botanical resources. This is a critical habitat of native species of ancient Wiliwili trees. You know, Members want to know about, want experts to tell us what's going on here. We have staff from SHPD. They are the experts. I would like them to come down. You allow the Committee to have input from Trustee Mossman, Mr. Chair. I think it's only fair that we get input from the staff of State Historic Preservation who've come down here to answer this, the, the comments in this letter.

You know, Members, the reason I made this not only because of the botanical resources that weren't adequately surveyed nor was an adequate preservation plan presented for that. But the historic sites were not adequately surveyed. State Historic has still not approved the survey of this property for the historic sites. And so naturally there's no preservation plan, because you can't do a preservation plan until you get an approved survey, and then you do your significant determination on what sites should be saved. And we already know OHA has said that they are especially concerned that not 29 of the cultural sites so far found was inventoried under Criteria E, which would then trigger OHA's required participation. Criteria E deals specifically with evaluations of significance and property having an important value to the native Hawaiian people. On the contrary, every site was inventoried under Criteria D that could simply reduce our significant cultural sites to mere scientific research specimens and likely wipe them clean off the face of the earth.

Now, I appreciate what Member Mateo is saying, but that takes it out of our purview, Mr. Chairman. You know, that, that, to do this after the fact, after they've already received zoning from this Council, that foregoes our opportunity to put in any condition that would preserve these sites and make a cultural park out of it, or make a botanical preserve out of it. And so I would really appreciate, Mr. Chairman, if you would allow the staff from SHPD to come down for some questioning.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. Well, the Chair will give priority, first preference to the Council Members first. Staff, was there any requests from any Member to have SHPD? The Chair was not consulted about SHPD wanting to get involved in our discussions tonight. Typically, if there's a request from a Member, you go through Committee or check with the Committee Chair. To my knowledge, I was not consulted by anyone from SHPD --

COUNCILMEMBER ANDERSON: Mr. Chair, this just happened --

CHAIR MOLINA: --to offer their input.

COUNCILMEMBER ANDERSON: --like an hour ago.

CHAIR MOLINA: Yeah, I know. I, I realize that, but again we're going to give priority first to the Council Members and it will be a body's decision if they want to hear from SHPD. We don't even know who the representatives from SHPD are at this point, so I just want to state that for the record. Staff, did we have any, did SHPD or anyone call the Committee for, to be a part of tonight's discussion?

MS. NAKATA: Not that I'm aware of, Mr. Chair.

CHAIR MOLINA: Thank you. I just wanted the public to know that for the record.

COUNCILMEMBER ANDERSON: Mr. Chair, I asked them to come about an hour ago --

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --and it's their Maui staff archaeologist and their cultural specialist. That's who they are.

CHAIR MOLINA: All right. Well if it's the will of the body to have them participate on this amendment so be it, but for now we will reserve our discussion here for the amendment up until the point where we, if any, a majority of Members want SHPD's input now at this late juncture. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yes, Mr. Chair, thank you. I too like to caution or err on the side of being safe as far as what we preserve, right. And I like what Mr. Mateo has brought up, because now we've expanded from 110 acres to 198 acres or whatever the, the figure might be, which gives us an opportunity to find even maybe more than what we originally went out for. You know, and I think that is very important, and I like that idea. Not I'm against what Ms. Anderson is putting out, but I like the idea of expanding it and not having anything done until these reports get back, get confirmed that a preservation plan is in place for which all of us can see, and to make sure that those areas that need to be preserved will be preserved forever, because I agree once we lose 'em, we don't get 'em back. There's no argument from me in that

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

area. I've never argued with anybody in that, in that respect. And we have very limited resources here in the islands, especially Maui County.

So, but I like the idea of even expanding it further, you know, and like I've been told, I've been told by some of those out there in the audience and others around town that we don't know what's out there. We really do need a complete inventory. We really do need the experts to get in there. And I do not want to see a blade of grass moved, a blade of, or a stone moved, or anything changed by the developer until that comes back and all of that has been completed, and that all the parties involved whether it's OHA, SHPD, the Maui Cultural Resource Committee [*sic*], or whatever else needs to be involved, that that plan be done, because that plan will be again the real benchmark for what this Council is intending to do, is to make sure that no developer can walk in anymore and just say here, this is what we get, this is what you did, say yes. No, we're not going to say yes.

So we do want this done right. So I prefer, and, and my, my leaning is towards what Councilmember Mateo is proposing, because that expands it, makes it more viable, gives everybody an opportunity to get in there to do what they need to do, all the experts, hopefully, Dr. Altenberg and all the rest will be involved in this. You know, we preclude and we don't exclude anybody. We want everybody to be, because when this plan is said and done this County want to be the shining star in the rest of the State to say we're not afraid to preserve what is culturally, historically, and otherwise a resource never to be lost in this County. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. The Chair will go down the line. Mr. Pontanilla, do you have any comments to the proposed amendment to substitute with the language from Mr. Mateo to substitute Member Anderson's proposed condition?

VICE-CHAIR PONTANILLA: Thank you, Chairman. I have no problems in regards to that. And I think Member Anderson pointed out a lot of good issues that we should be taking a look at. But, again, you know, having the conservation with Trustee Mossman, you know, they're asking for the opportunity to, to review this plan along with, you know, having some information from SHPD. And if OHA is going to follow the lead of SHPD, then we should allow that. So for me, Chair, you know, looking at the 190 plus acres and see what they come up with, you know, with a committee of, you know, previously mentioned SHPD, OHA, and probably DLNR, and some of the cultural resource committees that we do have here on Maui along with those non-profits. You know, have them work together, come up with a win-win situation. That's my two cents.

CHAIR MOLINA: Thank you, Mr. Pontanilla. Mr. Medeiros, any comments on the proposed amendment?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I, I too think that, you know, Member Anderson's proposal has a lot of merit to it and anything she does, you know, she does well. She researches it and so forth, and brings forth to this body for us to consider, you know, her proposals and certainly they are well-founded. But hearing Member Mateo's proposal I would

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

like to see the agencies that are in place, government agencies that are assigned and charged the responsibilities to review such proposals as, or, or requirements that the project is required to present, I'd like to see them review it, and like Member Mateo said they have the people that are educated, trained, and schooled to do this review. Certainly I'd like to see it be back at the Council after their recommendations and after their review.

So I, I would be in support of Member Mateo's proposal that this be reviewed to the extent it deserves by law, and then the recommendations come back to us so that we can make informed decisions on this, and that's what I would be supporting. Thank you, Mr. Chairman.

CHAIR MOLINA: Thank you, Member Medeiros. Member Baisa?

COUNCILMEMBER BAISA: Thank you, Chair. Of course, as you know, I seconded the motion, and I too would like to give kudos to Member Anderson. She is a tireless worker on behalf of doing things right, and I know that her heart is good, that she would like to see these lands preserved and any archaeological, and artifacts, and important cultural things kept well. However, I do like Mr. Mateo's idea. I like the idea of a bigger piece. I like the idea if I didn't miss what he said. He said that this land would be set aside, this acreage would be set aside and that nothing would be done with it until the appropriate studies had been done, and then an appropriate plan was approved, prepared and approved. And I think that preserves the area. I think it provides us with the appropriate information so that what needs to be preserved will be preserved. And I'm very comfortable in supporting that.

CHAIR MOLINA: Thank you, Member Baisa. And Member Johnson, my apologies.

COUNCILMEMBER JOHNSON: That's all right.

CHAIR MOLINA: I realized Member Baisa seconded the motion, so I wanted to give her an opportunity.

COUNCILMEMBER JOHNSON: Oh, not a problem.

CHAIR MOLINA: Go ahead.

COUNCILMEMBER JOHNSON: I have a question of Corporation Counsel. Basically, because as proposed the, and I guess we're just being handed out the language now, the requirements underneath the application when we give a land use change there's certain things that we're supposed to do as a Council, because we are the decision makers, and components of the application that are before us in order for us to be considering this as a complete application. Is there a problem with having that component not satisfied, and I know, I heard you last time when you said that we should have everything done to our satisfaction with regard to conditions, and I guess components of the application. Is there a problem with us passing something out that does not have all of the legal requirements prior to the approval and the land use change?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: Well, the issue would be what were you provided with? And in this case the Department transmitted the application on to you with apparently its belief that the application was complete. Now you can disagree with that conclusion and decline to pass on the application or deny the application on the basis that the complete information was not given to you. However, if there's additional information you need, as I, as I said before on other cases I, I would recommend that you get that information prior to voting rather than having a procedure where you come back later on and have another level of review. That's my perspective. I'm not saying that you can't do it a different way and give Council another sort of crack at conditions later on. It's just a bit cleaner to do it at this stage and get all the information required. But, again, since you've had this application transmitted to you I would believe that the Planning Department's perspective was that the application at least met the bare minimum requirements under the Code, a determination that you are certainly free to disagree with and condition appropriately or decline to act on appropriately.

COUNCILMEMBER JOHNSON: Thank you very much. Mr. Chair, and, and could I ask a question of Mr. Mateo?

CHAIR MOLINA: Proceed, Member Johnson.

COUNCILMEMBER JOHNSON: Because this is generally focused on the cultural component is there an intent, or would you object to the insertion of some type of language that the environmental aspect of, and particularly the Wiliwili forest, that in addition to the cultural aspect and the Hawaiian site preservation, and the archaeological significance, that there also be some type of a biological component?

CHAIR MOLINA: Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. Ms. Johnson, thank you. That, that is an item that is the body's choice whether the body would want to include it in. I, I, you know, myself I threw this out as a consideration thinking that it was streamlining, or making, or clarifying a real lengthy process. I am not opposed to the inclusion. It is the body's consideration of whether they want it included into the proposal.

COUNCILMEMBER JOHNSON: Yes, and, and, you know, as a result because of the review that's been done by both the biologist and, of course, the Office of Hawaiian Affairs, Department of Land and Natural Resources, it is including the native species, it is including some endangered species, critical habitat. So I'm not opposed to it, but I would like to see language inserted in this that also addresses, you know, perhaps a cultural plan which includes preservation of habitat and wildlife area as well as preservation of plants. That to me is really important, and then I do agree with Member Medeiros. I think that where this, and I, and I know we've done it in another condition, perhaps the applicant won't want to come back to us, and yet we are the decision makers who do not have adequate information in order to say what we want. Therefore, because

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

we're not being given this information prior to being asked to make a decision I think it's only fair to do what we did in the case of the other condition and require that plan to at least have some type of approval mechanism by Council, because we are the people who are giving the zoning not OHA, not SHPD, and not DLNR. It's our kuleana. Therefore, if we don't have the information, and we're the ones that are going to have the flack if this is not preserved, I believe just as was done in the other condition that we have here that if this is what the applicant wants to present to us, then he needs to come back and at that point in time the other agencies will be able to give their comments because as was said by Member Mateo we're not the archaeologists but there are other people that have plant, you know, backgrounds, they have cultural backgrounds who will be able to look at the plan that has been part of a public process and in front of us be able to give their comments perhaps making it a better plan.

So, therefore, because our feet are being held to the fire I believe it's only fair that we're the decision making body, we're the ones that are charged with upholding the process, and to me I would like to agree with Member Medeiros that we add in that it be subject to approval by the Council. And in, in addition having the biological component included. Thank you, Mr. Chair.

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

COUNCILMEMBER ANDERSON: Thank you, Chair. I agree with Member Johnson and Member Medeiros. Again, the reason I made this Conservation Easement a condition is because we don't have adequate information in order to make an informed decision. So I say save it all. I, I passed out a week or so ago, whenever we last met, and I think all the Members got a copy of this map, Mr. Chairman, and it shows the overlay of the site that Mr. Jencks was proposing to preserve an 18-acre site. It shows all the native plants all over here that would not be preserved with his proposal. And, unfortunately, we still don't know on his site plan where all these historic sites are. I think we need to include botanical review by Fish and Wildlife, you know, just as it says in our application once, again, identification of environmentally sensitive areas, habitat, and botanical features, exceptional trees, a preservation/mitigation plan, and comments from DLNR, U.S. Fish and Wildlife, and U.S. Corps of Engineers. And I'd like to remind Members that when this application came through in 2000 to the Planning Commission, they used their 1988 botanical survey done for an EIS; totally inadequate. The EIS is totally stale, totally inadequate for what we are dealing with today. In addition, the historic review they had in 1988 was totally inadequate. And, Members, the reason they did a second survey is not out of the goodness of their heart, it's because the State Land Use Commission made it a condition. The State Land Use Commission recognized that they had not done an adequate survey, and they asked them to survey the southern, the southern portion of this land that had never been surveyed, and also to expand the survey on the northern portion.

So that's how we got the, the 2000 and 2001 inventory surveys that are still not complete and approved by State Historic, and I wish you would allow them to come up and address that, Mr. Chairman, because while I appreciate what Member Mateo is trying to accomplish here, unless we have the right for this to come back to the Council once they have an approved preservation plan and a preserved botanical, I mean an approved botanical preservation plan,

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

we're not going to have any say in what happens. And as, you know, Mr. Mateo's condition requires that no construction shall begin within an approximate 200 acres in the southern portion of, of the project, that's already the law. In fact, the law is they can't touch any 670 acres of that property until they finish the historic preservation process through State Historic. Until they have gotten approved survey, gotten approved significance determination on the sites, which sites they have to save, which sites they can destroy, and until they have an approved preservation plan which is approved by State Historic and OHA. They can't touch 670 acres not just 200. And that's already the law. I mean we don't have to say anything to make that happen. We could approve this today without any condition whatsoever, and they'd still have to do that.

So that's State law, and I wish, Mr. Chairman, you would allow the State Historic Preservation staff members to come forward so we could get some clarification here on what we're doing. We want to make an informed decision. We have the experts here, the experts who will be, you know, who are currently reviewing this project, who have asked the applicant for more information...*(change tape, Side 1B)*...I mean who are the ones who are going to approve every step of this review process. So please, Mr. Chairman, let's make an informed decision. We have experts here who can help us out.

CHAIR MOLINA: Okay. Thank you, Member Anderson. In due time the Chair will consider having them come up here to provide some clarification for the Committee. Member Johnson, do you have any specific language you'd like to incorporate?

COUNCILMEMBER JOHNSON: If I could have just about, just a ten-minute break to work with Staff, even if it's five minutes, I think I could come up with some language that would at least, you know, look at the cultural and environmental aspects of it. And I, I just need a little bit of time just to come up with that wording. If you want to, if you want to --

CHAIR MOLINA: Yeah.

COUNCILMEMBER JOHNSON: --hear from State Historic Preservation Division I can work with Staff and, you know, try to do that while that conversation is going on.

CHAIR MOLINA: All right.

COUNCILMEMBER JOHNSON: But I'll be happy to...

CHAIR MOLINA: Okay. In a moment we'll, we'll take a recess. The Chair would like to offer his comments on Mr. Mateo's proposal. I can support it. I think it goes beyond, in terms of acreage, you're looking at 110 acres versus close to 200. I think if, correct me if I'm wrong, Mr. Mateo, you're, you're looking at basically condensing down and just leaving the review part to the so-called experts, SHPD. Members, I wanted to throw this out to you. In your amendment, Mr. Mateo, I wanted to include involvement of native Hawaiian groups as well to ensure that they not be left out of the process. And I believe we have an attachment to Member Anderson's condition from the Maui Cultural Lands, Incorporated. If we could include them and any other

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

native Hawaiian groups for comments as well on this. I think it's only appropriate. If we're talking cultural, then I think we need to get to the grassroots organizations that can help interpret what the various sites are. So if there are no objections, Members, I would also like that to be incorporated. Mr. Mateo, any comments?

COUNCILMEMBER MATEO: I, you know, I don't have any. I think that's a good addition. It's, it becomes inclusive, and, and I think throughout the discussion I think that was where we were headed. We were talking about having people who know what they're doing with the professionalism and the expertise help us. And I think that's, you know, by, by your addition to it, Mr. Chair, it just continues to provide that kind of assurance that the end product will be one of quality.

CHAIR MOLINA: Okay. Thank, thank you, Mr. Mateo. And I think the combination of science as well as the cultural contribution towards defining the various sites I think it's important -- the blend of the past and the blend of the present. So with that being said, Members, the Chair will call for a recess until --

COUNCILMEMBER MEDEIROS: Chair?

CHAIR MOLINA: --6:45. Oh, I'm sorry, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yeah, just shortly. Are we allowed to ask the Department a question at this time?

CHAIR MOLINA: Sure, go ahead.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Chairman.

CHAIR MOLINA: For the Planning Department, I wanted to get some clarification. The cultural preservation plan was that a requirement of a complete application that was sent to us?

MS. SUYAMA: What, what happened, what happened is that the application was reviewed by the Maui County Cultural Resources Commission, and one of the things that they had recommended that there would be, a cultural plan be prepared to resolve issues dealing with the archaeological or cultural sites. So that's where that, where the recommendation came from.

COUNCILMEMBER MEDEIROS: And what is the process with a recommendation like that? When would that be done, and when would that be submitted?

MS. SUYAMA: Usually in the process of going through the application probably during the time of the Phase II Project District review process that we would request that the cultural plan be developed, and we would take it to the Maui County Cultural Resources Commission for input. We would also most likely send it to the agencies for review and comment.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCILMEMBER MEDEIROS: And, and then would that plan through the process would these recommendations be returned to the Council for consideration or not?

MS. SUYAMA: It's normally not returned. It's normally where once the condition has been set the, whoever the reviewing agency is would make sure that it's implemented. And if it's where the cultural plan is reviewed by the Maui County Cultural Resources Commission, then based upon their recommendation or their approval of the plan that is how we would implement it during the review of the development itself.

COUNCILMEMBER MEDEIROS: Oh, I see.

MS. SUYAMA: And, you know, just, just for your information there are two things that I think the Council is discussing. One is the archaeological or cultural sites. The other discussion actually dealt with the environmental issue which is the critical habitats which is the Wiliwili, et cetera. So they're two separate different entities, so you may want to either tailor it as two separate conditions for clarity, because they're trying to preserve different things.

The other, only other thing that the Department would request is that since you're referencing a 200 acre portion that in some way or fashion you determine what, where that 200 acres is located, because we have had several maps that have been distributed to the Council by the applicant, by Lee Altenberg, by other people. And for clarity sake I think for the Department to implement anything we need to know exactly what 200 acres you're talking about either by some kind of demarcation of the boundary. We're not talking about a metes and bounds description, but at least a demarcation line that if it needs to be implemented, you know, once this project is approved we as the planners or the Department know exactly what the Council meant and the area that the Council meant to be left aside until this plan is developed. So, I, you know, I would recommend that you attach some kind of map, as much as possible, that will delineate what that area is.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Department. And, Mr. Chair, I just wanted to qualify my remarks that I made. I was supporting Council Member Mateo's proposal, and it was my understanding it was on the cultural preservation plan. And if I can ask Mr. Mateo if that was his intent?

CHAIR MOLINA: Mr. Mateo?

COUNCILMEMBER MATEO: Yeah, actually, Mr. Chairman, yes. I, I thought that by allowing the entities that we have identified, I think by allowing them the opportunity to actually assess the area that I was hoping that part of their due diligence is to come back and tell us what actually needs to be done in the area. And that would be inclusive of their environmental needs as well. And, you know, it's not to take away or detract from existing, you know, other conditions like, for example, the, the condition with the owl and the, the hoary bat. So, no, it's not taking away, and I'm hoping that upon completion of these entities assessments that they will come back and provide us with, with, you know, real definite, rigid directions that we need to do in being able to

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

preserve these areas. So it would be inclusive. This is why they're charged with that responsibility of taking care of our significant sites.

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

COUNCILMEMBER MEDEIROS: And, and my final comments, Mr. Chairman, thank you, is that that's what I was supporting. And I didn't realize the process did not include returning it back to the Council, that it would go directly from the reviewing entities and be set in place that that was going to be the plan. And I didn't want to add any, you know, additional process to this long process as it is. So my thinking is too I'm supporting Mr. Mateo's plan. I just wanted to be sure that the agencies that review this are indeed the experts in the field on these matters. And for me it didn't matter if it came back to the Council for another vote, but that at least we would have the information so we can, you know, say that, okay, this is a good plan. So thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Members, we're going to go ahead and take a recess to allow Member Johnson and Staff to work out the additional language as well as the Chair's recommendation to insert the language of involving native Hawaiian groups into the process as well. So we shall recess until 6:55. . . .(gavel). . .

RECESS: 6:43 p.m.

RECONVENE: 7:07 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting for October 18, 2007 is now back in session. It is seven minutes after the hour of 7:00 here on Tuesday night, November 13th. Thank you for that break, Members. Upon conferring with Staff and along with Member Mateo it's been brought to my attention that Member Johnson's consideration would inadvertently cause a problem as far as parliamentary procedure goes, because we do already have two motions on the floor. The original motion from the bill, then you had Member Anderson's consideration to insert her proposal, then Member Mateo asked for consideration of his proposal, and then with Member Johnson asking for consideration of hers as well, it might muddy up the waters a little bit.

So the Chair's going to ask for the consideration of Mr. Mateo and Member Anderson, Ms. Anderson, to withdraw their motions so we can consider this matter at another point in time, maybe tomorrow if that is the will of the Committee to meet just so we can get it straight and make sure as far as what we want implemented as it relates to the cultural plan to ensure that we have involvement of the native Hawaiian groups as well as the scientific aspect that Member Johnson has asked us to consider as well as the cultural review from Mr. Mateo to include SHPD and also OHA.

And I realize we do have representatives from SHPD here tonight. I would like, I would prefer that if SHPD can join us at our next recessed meeting, then we can start fresh at that point,

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

because we do have some other considerations the Chair would like to hear from. We have one from Member Medeiros, also Member Johnson, and also Mr. Victorino. So being that we're somewhat pressed for time to maintain quorum the Chair would like to move on there, and we will, the Chair will give you guys a moment later on to check your calendars to look at a date the Chair will throw out for consideration to revisit Condition 13. So that is the Chair's recommendation. Member Anderson?

COUNCILMEMBER ANDERSON: Mr. Chairman, during the break I spoke with Member Mateo, and it appears the problem was trying to combine botanical with historic. I have already prepared conditions that meet the intent of Member Mateo's condition, and I would hopefully request that we, you know, every time we get this condition on the floor it gets, you know, waylaid for another meeting. And since we do have Historic Preservation here I would hope that we could, you know, this is the most contentious condition we have left. We've already spent two and a half hours on it, and for not, for us not to come to completion I think is a waste of everybody's time. We're going to have to start all over again.

I have two conditions. One is the Historic Preservation Condition that just requires that they do a preservation plan that gets approved by State Historic and the Office of Hawaiian Affairs prior to Phase II, and that the report shall be submitted to the Council for review, and that the project will be subject to additional conditions if warranted by the Council. The same thing with the critical habitat, that the report done by Dr. Lee Altenberg, which is an extensive report of the area, be submitted to DLNR, Fish and Wildlife for their review prior to Phase II, and that their comments regarding the conservation value of the lands contained in the report be submitted to the Council for our review prior to Phase II and be subject to additional conditions if warranted.

So if Member Mateo would like to speak to these conditions I think that this would allow us to wrap this up once and for all. If you would please allow State Historic to come forward and explain to us the process, we cannot narrow their review and preservation to 200 acres. They are required by State law to review all 670 acres. No construction can take place on any of that land until an approved preservation plan has been submitted to the County by State Historic. So these two conditions that I just outlined I believe, Ms. Nagata, did you pass those conditions out? If you could pass those out. It basically accomplishes what Member Mateo wants, what Member Johnson wants, what Member Victorino wants, what Member Medeiros wants, and we can wrap this up.

CHAIR MOLINA: Okay. Thank you, Member Anderson. I'll ask Mr. Mateo for his comments as well.

COUNCILMEMBER MATEO: Chairman, I'll yield at this point to the, to the body so they can provide their comments.

CHAIR MOLINA: Okay. Members, you heard the Chair's recommendation which was, well the first initial proposal, I'm sorry, Member Johnson?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCILMEMBER JOHNSON: Yes, just a point of order. Because we're asking, you know, we, we have stuff already on the floor.

CHAIR MOLINA: Yeah.

COUNCILMEMBER ANDERSON: We have two on the floor.

COUNCILMEMBER JOHNSON: If we're going to reconsider...

CHAIR MOLINA: The Chair was going to get to that...

COUNCILMEMBER JOHNSON: I'm just going to ask, you know, and remind we need to withdraw that.

CHAIR MOLINA: Yeah.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MOLINA: I was just going to get, get there and remind the body of what's currently on the floor and what is the latest consideration. So, Members, you heard the Chair's initial recommendation which was to withdraw the motion and address Condition 13 at a later point. Member Anderson has offered an alternative compromise, if you will, to consider her conditions which apparently would seem to address the concerns from Mr. Mateo as well as Mr. Victorino, and Mr. Medeiros. So I'll leave it to you, the body, if that is the will of all of you to go look at the compromise instead. But if, if you decide to do that I would still again ask for Members Mateo and Anderson to withdraw their motions, the original motions just so we can basically start fresh again, and then, Member Anderson, you can propose this latest matter that you have.

VICE-CHAIR PONTANILLA: Chair.

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: I know Member Mateo had a motion on the floor and during the recess he along with Member Johnson was going to get together to come out with a motion that would, you know, satisfy both Member Johnson as well as Member Mateo, and possibly the rest of us here. And I was wondering if it's possible to hear that amendment that has been proposed by Member Mateo as amended.

CHAIR MOLINA: Okay. Mr. Mateo, anything further to the add with, as it relates to Member Pontanilla's comments?

COUNCILMEMBER MATEO: Chairman, during the break Ms. Johnson and I spoke on, on several items, but we did not come up with a, with a constructive joint I guess proposal at the time, because we had additional considerations, and then we also extended it to the Planning

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

Department, and Planning Department had some additional considerations, and then I, I asked Ms., Ms. Anderson also to assist us. So we didn't come up at that particular stage with, with anything particular. Ms. Anderson, however, did come up with a proposal that would join both the concerns that was expressed by the Planning Department in terms of recognizing the motion in both a historic and the cultural issues that Planning Department had had. So, so at this point, Mr. Chair, I do have a proposal. I would like a couple of more minutes to review this proposal prior to my withdrawal of my, my amendment.

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

COUNCILMEMBER ANDERSON: Yes, Chair, and basically the conditions that I passed out, Historic Preservation Condition and Critical Habitat Condition these are basically combined into one condition and that's what we were trying to do during the break. And then Member Mateo said that the Planning Department thinks they should be separate conditions. So then I presented these separate conditions. And it's cleaner that way, and it basically, you know, synthesizes what I was trying to do with the Conservation Easement and also what Member Mateo was trying to do with his preservation easement, but it makes it very clear that the, the requirements of our application for Change in Zoning call out for this kind of review, for this kind of approval prior, prior to our decision making.

Since we don't have it, then the applicant should go and do it before Phase II, bring it back to us, give us a chance to look at it, and if there needs to be any further conditions to uphold these preservation plans, then we have, still have that option to do that. But this will not hold anything up. This allows them to go forward and finish the job that they should have done in the first place. It allows State Historic and the Office of Hawaiian Affairs to do their job, and, and I would remind Members that anybody, Na Kupuna O Maui, Maui Cultural Lands, any of the native Hawaiians sitting in our audience tonight who want to be a part of the historic perseveration review process they are already by law entitled to be a part of the process. All they have to do is call State Historic or send them an e-mail and say they want to be consulted parties, and they will be included in the process. By law, under the legal, legally mandated process not something that we make up as we go along, but something that is already there and is, you know, a rule and regulation that everyone can follow. And that's all we're trying to do here, Mr. Chair, is to follow the law, uphold our fiduciary responsibility to the citizens of Maui County and, you know, it, it seems to me that it's just very clean to have two separate conditions and that we can just move on with it, Mr. Chairman.

I would like to note that the applicant was required, or I don't know if they did it, you know, they say they did it voluntarily, but it's a requirement of an EIS or an EA to do a cultural assessment report, and they did that report and submitted it to us last week. And I would just like to put into the record the one person they, they, part of the report they're required to interview cultural practitioners of the area who have specific knowledge of the area, and the one person out of, I don't know I think they interviewed five people, six people, only one person was born and raised in the area and this person's name is Kevin Mahealani, sorry, Kevin, Kai'okamalie. And I just

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

want to read what he says to the Members. I don't know if any of you had time to read this, but I made it a point. I thought it was very interesting.

He says places like Honua'ula, you know, in my opinion got to stop already. You know, I've seen plans to develop much of what's left of Makena. I've seen plans drawn up by the landowners, three of them. This was by accident. You know, I don't know, development in my opinion should be concentrated in areas where you're not going to further desecrate our culture. In tracks of land, you know, open to such things. If you know it's inevitable, you know, get cane fields. That's all being, you know, but places like Honua'ula, you know, despite it being extensive, you know, the cultural significance of land such as Honua'ula, Kahikinui and Kaupo, there's not many places where you can just walk and see, and, and, and see the past, because the people say the past is the past. That's not what I said. See, I'm going to skip a little because he's kind of rambling. That identification is very important to my future I feel, because it defines who I am. Integrity, you know, as a man. I see hard work in the cultural side. Ask anybody's working they going tell you that one of the hardest people I've, I've ever been, that's one of the hardest people I've ever been around. See it's not just our past, it defines who we are. You know, define our future as a people. That's how important places like Honua'ula is for our keiki. There's places like Honua'ula, Kahikinui, and Kaupo that still harbor our history, our natural, history, our cultural history. Those places should be preserved inevitably for that simple reason, because these are the last Hawaiian places. Honua'ula, Kahikinui, Kaupo. In my opinion the most, again, I don't like this term for a lack of a better term, these three moku, in my opinion, are the most culturally significant, culturally valuable.

CHAIR MOLINA: Excuse me, Member Anderson, you need to conclude so, I, I believe if you can give us reference point and the Members...

COUNCILMEMBER ANDERSON: And it's not just of the cultural sites that exist there, but the botanical treasures. So I'm bringing this up, Members, because this is a cultural descendent in the area telling us preserve it. This isn't just me. And, you know, I understand my condition as maybe a little too much for people to swallow, because it's saying right off the bat preserve these 110 acres of this ancient Wiliwili forest that will never be seen again as well as these significant cultural sites. That might be too much for people to swallow, because I don't know that this Council has ever passed a cultural easement persevering 100 acres in this manner.

But these two conditions that I just put forward, if Members will support these I'd be happy to withdraw my other condition, because this at least gives us the opportunity to see an approved preservation plan for both the critical habitat and the historic sites, and allows us a second shot. If those preservation plans come back and substantiate that this 110 southern acres really do warrant preservation, then we have the opportunity to do that, Mr. Chairman. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Okay. Committee Members, before we act or proceed further on this, any objections to having the representative from SHPD come up to respond to some questions from the Committee since they're here?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. The SHPD representative or representatives please come up? And, Members, after we hear the, conclude our Q and A with SHPD, and I do want to, I'm sorry because of time I'll allow 15 minutes for any additional Q and A as it relates to the proposed conditions from Member Anderson, and then we will move on to the other considerations from some of our other Members. I believe we have Member Medeiros and also Member Johnson. If you could please go ahead and identify yourselves.

MR. RODRIGUES: Chairman Molina and esteemed Members of the Council, (*testifier spoke in Hawaiian*), with all of you are the greetings of aloha. My name is Hinano Rodrigues, and I am the cultural historian for the Department of Land and Natural Resources, State Historic Preservation Division, and I have with me Jenny Pickett, who is the Maui archaeologist of the same. We're here not to discuss any, any content of any kind of report that you have seen but rather we're here to clarify certain issues. And the most important issues for you to understand the, the review process. In a nutshell, we have not accepted an AIS. And so it's very difficult for us to understand how you can go forward and talk about a preservation plan, because you cannot have a preservation plan without an archaeological inventory survey. So once that survey is done we'll approve that, and then we go on to the next stage, which is to approve a preservation plan. And we are very far from that at this point.

CHAIR MOLINA: Okay. Thank you, Mr. Rodrigues. The Chair will start off with a couple of questions, and then I'll open it up to the rest of the Members. I think the public's been very made aware of the challenges you folks have had to deal with in terms of personnel and keeping up with the various applications. We were told in Committee by the Deputy Director of Planning that there is roughly over 300 applications, I believe it was Maui applications, and I would ask that Director to correct me, that, I guess the Department is behind on. Can you substantiate that and clarify that?

MR. RODRIGUES: I, I don't exactly know how many, what the exact number is, but I, I think you folks need to understand, and I, I, I venture to guess you probably already understand especially the Planning Department that at least our Division was not designed to handle the kind of development that Maui is seeing now. The amount of permits that are coming into our department we do not have the staff to deal with that. And add to that problem that both Jenny and I have been taking care of the islands of Hawaii and Oahu. There was a point where there was only one cultural historian for the entire State and one archaeologist. So, and, and you need to also take into consideration that the person who went and, and, and shared those statistics with the rest of the public is what I would call a disgruntled employee. That employee is no longer employed at State Historic Preservation. So I, I think while those might be the facts we need to put it in its proper perspective.

CHAIR MOLINA: Okay, and my other question is basically, you know, we've been discussing this matter since January, and I know, you know, the various times I think, I believe your name as well as Ms. Pickett's name came up with the applicant's archaeologist. Can I ask why you folks

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

have not responded in terms, and, and I use OHA as an example, OHA responded in a letter. And according to Member Anderson tonight she contacted you to come here and, you know, I as the Committee Chair was not consulted or any of the Committee Staff or any Members. Why tonight at this late stage? And I think it's important the public knows, and I know you have some, as I reiterated again you do have some challenges with, in terms of bodies and what not.

So can you just, again, clarify to the Committee why tonight and why didn't we get a response earlier? Because according the applicant's archaeologist there were some, I guess, phone discussions that were going on with regard to the application. I think it would have helped the Committee if we would have gotten something in writing whether it be from the Maui Division or whoever is on Oahu. Can you comment?

MR. RODRIGUES: And, and, and we, we apologize for that if we are at all to blame. You need to understand that the archaeologist who was working with the, the State Historic Preservation archaeologist who was working with the contracted archaeologist is no longer with State Historic Preservation. All the communication has been with that person until recently. So we are, we have become involved in Wailea 670 only recently. That letter, that letter from Clyde Namu'o, the Administrator for the Office of Hawaiian Affairs, the letter that Mr. Sinoto wrote, I, it was I believe to you has only come into my hands as of Friday. That letter was delivered to my office. We, we had no, I'm talking about the letter of October 29, October 30, and November 7th. Nobody communicated with us with regards to that.

CHAIR MOLINA: And you're talking about the same archaeologist, the disgruntled employee?

MR. RODRIGUES: Yes.

CHAIR MOLINA: What is his name for the record?

MR. RODRIGUES: That would be Melissa Kirkendall who no longer works with State Historic Preservation.

CHAIR MOLINA: And this was the archaeologist that was working with the applicant --

MR. RODRIGUES: Yes.

CHAIR MOLINA: --in this case? Okay. Members, the floor is now open for questions. Mr. Medeiros followed by Member Anderson.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. So this evening the statements you make represent SHPD the main office?

MR. RODRIGUES: With respect to?

COUNCILMEMBER MEDEIROS: What you say represents the office, the agency?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

MR. RODRIGUES: Yes, the statements that I made with respect to what procedure is, yes, but it's even more than that. It's Hawaii, it's Hawaii Administrative Rules and Hawaii Revised Statutes. These, these aren't things that we make up. It's, it's in the law already.

COUNCILMEMBER MEDEIROS: And you both are here in the Maui office?

MR. RODRIGUES: Yes.

COUNCILMEMBER MEDEIROS: Okay, and so hearing...*(change tape, Side 2A)*...what you say there's been many personnel changes in your agency, and there seems to be some challenges of logistically taking care of business in your agency, but can you see our challenge that we're not part of your agency, and we're not privy to what goes on in your agency? We just know that you're supposed to review this, and then send it on, and that hasn't happened.

MR. RODRIGUES: And, and...

COUNCILMEMBER MEDEIROS: And, and I know, I know you say you had personnel changes, but that doesn't become, you know, for us to have to be concerned with that, you know.

MR. RODRIGUES: And, and I, I agree with you, but you need to understand that whatever personnel changes we have suffered it has nothing to do with the review of Wailea 670.

COUNCILMEMBER MEDEIROS: Yeah, no, I understand that. It's just that internally you've had those changes that affects applications and the review of applications, and that seems to be our concern that the application review didn't go forward for as long as...

MR. RODRIGUES: The, the application --

COUNCILMEMBER ANDERSON: ...*(Inaudible)*...

MR. RODRIGUES: --the application review didn't go forward because your applicant's archaeologist is not done, and law, the law prohibits us from moving forward.

COUNCILMEMBER MEDEIROS: Okay. We, we heard differently. So we, we only can go with what's presented to us as information, and we, we, did not hear that part. We heard that there was submittals sent through the process.

MR. RODRIGUES: And, and let me, let me hand over the microphone to Jenny who, who is with the Archaeological Branch who deals directly with permits, and who has been dealing directly with Wailea 670 since the departure of the old Maui archaeologist.

COUNCILMEMBER MEDEIROS: And before you leave the mic I'll just ask a last question. And you did mention that the former archaeologist which was dealing with this, and it's a she?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

MR. RODRIGUES: Yes.

COUNCILMEMBER MEDEIROS: Okay. She apparently had all the knowledge which went with her. Why wasn't that knowledge maintained in your files and records?

MR. RODRIGUES: That's a question, and I'm embarrassed to say it, that is a question that only she can answer.

COUNCILMEMBER MEDEIROS: No, that seems to be an internal thing for the agency to correct, because if somebody goes on vacation, you know, business doesn't stop. Somebody should be responsible to continue.

MR. RODRIGUES: Okay, and, and, you're, you're right, but I think let's, let's apply that, that perception directly to this case. For all intents and purposes, Ms. Kirkendall did respond to your applicant's archaeologist, or did respond in part to the AIS that was done a couple years ago, and in that response she did say it's not complete and nothing came in after that except for maybe verbal communications between Ms. Kirkendall and Mr. Sinoto. But nothing substantial came in, so there, so there was nothing with which to move forward.

COUNCILMEMBER MEDEIROS: And so my last question, thank you, Mr. Chairman, is that when we heard the response from OHA they were waiting for something to come to them, but they didn't seem to get any correspondence from your agency saying you didn't have anything to go forward with. And I think that's why OHA was not very happy about us having them respond to our request when they had nothing to respond from.

MR. RODRIGUES: The only letter that I saw from OHA was the November 7th letter written to my boss, the Administrator Melanie Chinen. That's the only letter I seen from OHA. It's my understanding, based on, it's my understanding of Hawaii law that State Historic Preservation does not have a responsibility to respond to OHA. My understanding of Hawaii Administrative Rules and Hawaii Revised Statutes is that your applicant has a responsibility to ask OHA for consultation. So in, in reading Mr. Namu'o's letter I was a little bit confused, because I, I thought maybe he didn't understand what the rules were. But nevertheless it is my, my practice as cultural historian for this island that I listen to everybody. I don't care what the law says. You come into my office, you got something to say about an AIS an EIS, anything having to do with Maui and the culture I will listen. So I'm a little bit confused with that letter also.

COUNCILMEMBER MEDEIROS: Okay. Thank you so much for your information and your answers. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Member Anderson? Just one quick question, one follow-up to one of your questions, Mr. Medeiros. Can you state for the record when did Ms. Kirkendall leave the organization?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

MR. RODRIGUES: I believe Ms. Kirkendall left the organization in June of this year.

CHAIR MOLINA: June of this year. So she left with supposedly all the knowledge of the application. So from June up until now was there any effort from whomever in the department to pick up on this knowledge of the application?

MR. RODRIGUES: To be perfectly frank I'm not too sure if she left with a lot of knowledge. The knowledge that, the only knowledge that we had were the two reports from I think it's 2000 and 2001 and pretty much that. The sad thing that she might have left with is her conversations with Mr. Sinoto. And, and that's where it's a little bit unfair to him, because now he needs to start over again with us, but these things happen.

CHAIR MOLINA: Yeah, see this, this is where I think there's some concern, because now if it's the responsibility of the agency to address their personnel concerns is it the fault of the applicant or whomever to, you know, to, if they're behind they don't get the, you know, response from SHPD because of what happened with a lack of personnel, who's fault is it? So that's where I think the big, at least in my mind, where the big issue lies. And I think, again, following up on Mr. Medeiros's question I think, if I'm correct, Mr. Medeiros, where does fault lie in this case? Because if the State agency who has been deemed the responsible agency to review, and, and my, one more question is, I, I don't know if this is true or not. If an application is not approved in X amount of time is it then deemed approved? I mean can you provide clarification for that?

MR. RODRIGUES: Yes. But, again, I, I, and, and I can answer actually two, two questions, the two questions that you asked based on procedure. In this case, that is not the situation. This is not being held up because SHPD somehow suffered personnel changes or SHPD didn't review within its 30-day requirement, and, and that, that is not the situation. The situation is factually the AIS is not done. And if the AIS is not done we cannot move on to a preservation plan.

COUNCILMEMBER ANDERSON: Could you say what an AIS is?

MR. RODRIGUES: Oh, I'm sorry. I'm sorry. An AIS is an archaeological inventory survey, and that's, that's the first step. And then once we approve that, we say, and then as a part of the AIS the archaeologist might say, oh, let's save sites 1 through 19, and then sites 20 through 25 we'll do data recovery. Data recovery is pretty much another way of saying we're going to destroy it. So, so that's the purpose of an, an AIS. So when he says let's save one through 18, we say, okay, now how are you going to save 1 through 18, and they present that plan to us, it's called a preservation plan. We read it. We say, ahh-ahh, no, I don't, I don't think so or, no, I want you to save 1 through 29. I don't want you to save 1 through 18. So it's a process, and I understand it's a long process, and sometimes it stands in the way of, of government, but you know what, as Councilmember Victorino said, yeah, once we lose it, we lose it. If the Chinese want to learn about the Chinese culture they go to China. The Portuguese, like me I'm part Portuguese I go to Portugal. Yeah, but where are we Hawaiians going to go? This is it. We can't afford to lose any more than we have. But again I'm, I'm not going to stand on my soap box here.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. All right. Thank you, Mr. Rodrigues. And just for the record your title with the department is?

MR. RODRIGUES: I'm a cultural historian.

CHAIR MOLINA: Cultural historian. And, Ms. Pickett, you're...

MS. PICKETT: I'm the archaeologist, Maui archaeologist.

CHAIR MOLINA: Archaeologist.

MS. PICKETT: Yeah, I just wanted to also add that we have been working with Mr. Sinoto since Melissa Kirkendall's departure. I believe in the later part of September Hinano and I conducted a site inspection in the field. We looked at some of the historic properties. I've been in the process of trying to review the reports and make sense of it. It's not like we've just been ignoring this project. We're, we're actively involved in it. We are communicating with Mr. Sinoto. I've been in e-mail contact with him. We talk on the phone. So just, just to clarify that in case that wasn't made clear before.

CHAIR MOLINA: Okay. Thank you. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. I appreciate your allowing them to come down and give some clarity to this issue. You know, I know it's a confusing process to people who are not familiar with it, and it's unfortunate that we have to muddle through without that knowledge. I just want to make it really clear, and in asking my question to either Jenny or Hinano, and thank you both for being here it's much appreciated. The, the inventory survey that's been done on this project in August of, August 29th, of 2000, they did, according to the request of State Land Use Commission they did a survey of the southern 190 acres, and we're told by State Historic, that in their August 2000 review letter, that it needed revisions. Then in August of, August 28, 2001, State Historic requested further survey work, said that the southern area still needed, the survey was still not acceptable. They also said, and I have copies of the letters here if you don't have them, they also said that the northern survey still was not adequate and that the sites were not properly recorded.

Then Mr. Sinoto did, and this was the review of the June 2001 inventory survey. The second inventory survey that has been submitted. They did one in 2000 as Mr. Hinano, as Mr. Rodrigues said, as well as this one in 2001. So what I just read was State Historic's review of that inventory survey. This is the last inventory survey that has been received on this project. Survey is not acceptable for the southern portion, survey is not acceptable for the northern portion, and the sites that they record were not properly recorded.

Then they reviewed an addendum, and in their January 17, 2002 review letter, and that's the last review letter on this project, Mr. Chairman, State Historic said that they needed to submit a map showing where the sites were, also showing, a map showing previous surveys done by past

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

archaeologist. They also said that the survey transects were not acceptable, they were too far apart. That the northern portion still was not surveyed in inventory review level, and that they were still requesting testing. And this is in the August, sorry, January 17th, 2002 letter. So have either of you received anything in writing from the archaeologist since January 2002 that address any of those concerns?

MS. PICKETT: No, nothing in writing.

COUNCILMEMBER ANDERSON: Nothing in writing. So in fact, Mr. Chairman, it's the archaeologist for the developer who has not been forthcoming. He's had since January 2002 to complete this survey. It's still not completed today, and we're in November of 2007. So the last discussion, and, you know, you've, both of you I'm sure have looked at these surveys so far what we have. Do you agree that, and, you know, they show that they are asking to list whatever sites, every single site they have listed has Criteria D. And, you know, Criteria D means basically destroy it. Do some data recovery and destroy it. Do you agree with those significant determinations?

MS. PICKETT: Do I agree with it? Well, I, I've, I asked Mr. Sinoto in one of our recent e-mails to please provide us with the map that we've asked for before, and then I also wanted a table to summarize just to catch us up to date exactly where we're at. He, he did give this to me this evening. And it, and it looks as if maybe he's adjusted, some of the significance criteria, so I would definitely be happy to work with him to mitigate the sites.

COUNCILMEMBER ANDERSON: Okay, and so in your discussions with him, Ms. Pickett, since I guess September what things have you asked him to do?

MS. PICKETT: Well, in writing...

COUNCILMEMBER ANDERSON: Aside from what they asked him back in January 2002?

MS. PICKETT: Well, I, in my recent e-mail I, I asked for the table, of course, the map, of course, and then I also asked if there, there could be an additional survey to document all of the historic properties as was reflected in an earlier letter as well. But in my review of the reports I also had that same concern. And so I had asked him in this e-mail to, to go ahead and document all of the features. I don't know if you want me to read it to you?

COUNCILMEMBER ANDERSON: No, that's okay.

MS. PICKETT: But, but we've, we've been communicating.

COUNCILMEMBER ANDERSON: So has he provided any of that information in writing to you besides on the map?

MS. PICKETT: Not to date. Not to date.

**LAND USE COMMITTEE MINUTES
Council of the County of Maui**

November 13, 2007

COUNCILMEMBER ANDERSON: Not do date. So, you know, that seems to be the problem that no activity is coming from the consultant's archaeologist not from SHPD. I mean they have responded to everything he has submitted in writing up to January 2002, and they have received nothing since then. And that's why I've been so upset. I've been asking since last year for this information, and we haven't received it. The map you received tonight does it show where the sites are within the site plan of Wailea 670? That would be helpful, Mr. Chairman, if the membership could have that, if we could get a copy of that.

MS. NAKATA: Mr. Chair, that was distributed to the Members this evening.

COUNCILMEMBER ANDERSON: It was? Early on or recently?

MS. NAKATA: At the start of the meeting.

CHAIR MOLINA: Members, you need to look through all of the --

COUNCILMEMBER ANDERSON: It's probably underneath all my stuff here.

CHAIR MOLINA: --miles of documents here. Anyway, continue with your line of questioning.

COUNCILMEMBER ANDERSON: So I will yield, Mr. Chairman. I will yield.

CHAIR MOLINA: Okay. Members, at this point the Chair was quite generous in allowing SHPD to ask questions. I'd like to move on, so I think we've heard quite enough from SHPD at this point. So I'd like to consider us, and thank you for, you know --

MR. RODRIGUES: Mr. Chair, thank you, and Members.

CHAIR MOLINA: --putting yourself in the firing line here. We appreciate it. Thank you. Members, let's address Member Anderson's two proposals. I guess, Staff, should we do it separately then I guess it would be more appropriate? Your recommendation procedurally.

MS. NAKATA: Mr. Chair, I believe we still have those two motions to amend pending.

CHAIR MOLINA: Okay. Thank you for reminding the Chair.

COUNCILMEMBER ANDERSON: Mr. Chair?

CHAIR MOLINA: We do have the two motions on the floor from Mr. Mateo and Ms., Member Anderson. Does Mr. Mateo, I mean Member Johnson's already told us that you will not continue on with your language consideration. Mr. Mateo, I will ask you first for withdrawal.

COUNCILMEMBER MATEO: Mr., Mr. Chair, yeah, Mr. Chair, I will withdraw my motion to amend.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: I'll withdraw my motion only because I know I don't have support for it. Thank you, Chair.

CHAIR MOLINA: All right. Members, you have before you the conditions, I guess we'll consider it as separate conditions, Staff, again, because one deals with the historic perseveration aspect and the other with the critical habitat condition? Staff, response? I just want to make sure we proceed correctly and not get interrupted by, you know...

MS. NAKATA: Yes, Mr. Chair, two separate conditions were passed out. As the Chair noted one relating to historic preservation and the other relating to critical habitat. So the Members may want to consider separate motions on each, and resolve each, resolve one before proceeding on to the other.

CHAIR MOLINA: Okay. Members, you've heard the comments from Staff, and I would then I guess ask Member Anderson to offer a motion to incorporate as a condition whichever you choose to do so first, either the Critical Habitat Condition or the Historic Preservation Condition.

COUNCILMEMBER ANDERSON: I'll do the Historic Preservation Condition, Chair. "WCPT/GW Land Associates, LLC, its successors and permitted assigns shall provide a preservation/mitigation plan pursuant to Hawaii Revised Statutes, Chapter 6E, that has been approved by the State Historic Preservation Office and the Office of Hawaiian Affairs of the State prior to Phase II approval. Reports shall be submitted to Council for review and projects shall be subject to additional conditions by the Council if warranted by approved preservation/mitigation plan."

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Okay. It's been moved by Member Anderson to incorporate the condition related to historic preservation and seconded by Member Johnson. Additional discussion, Members? Comments from the body first, Mr. Hopper, before we...

MR. HOPPER: I just wanted to comment if the intention was to review the plan, rather than saying the report shall be submitted it should probably say the plan shall be submitted to Council for review --

CHAIR MOLINA: Okay.

MR. HOPPER: --and the project shall be subject to additional conditions, if that's the intent. Or if, I don't know if there's some sort of separate report you'd prefer.

COUNCILMEMBER ANDERSON: No.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

MR. HOPPER: Okay.

COUNCILMEMBER ANDERSON: Thank you, Mr. Hopper, that's correct.

CHAIR MOLINA: Okay. Shall we make that as a friendly amendment then to --

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: --delete the word "report" and substitute it with "plan."

COUNCILMEMBER ANDERSON: And, and, Mr. Chair, if I might since we're fine tuning here. I think I should add plans shall be submitted to Council for review prior to Phase II approval.

CHAIR MOLINA: Okay. We'll insert "prior to Phase II approval", and then we'll continue with the language: "project shall be subject to additional conditions."

COUNCILMEMBER ANDERSON: Right, just so that we're exact in when this should all happen.

CHAIR MOLINA: Okay. Members, are we all clear on that, "prior to Phase II approval", after the word "and"? Are we all set, Members? Member Johnson?

COUNCILMEMBER JOHNSON: Yes, and, and, you know, because it's considerably shortened, and because of the issues raised this evening I think that this does address my concerns because it is the agencies that are going to report to us if they believe there are additional conditions or additional components that are required in the preservation/mitigation plan, and then those would just be made part of the entire requirement, because they're basically making their recommendations to us, and if they make a recommendation, you know, the only way that it's enforceable as a condition is if it's incorporated into the actual ordinance. That's my view, and I, I just support this. I think it, it's not perfect, but then as we've heard the application isn't perfect either, and even the review processes. So I do support this.

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

COUNCILMEMBER BAISA: Chair, although I'm not looking for approval from the applicant, because that's our job I certainly would like to know what his reaction is to this.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Before I call up the applicant, if there are no objections, any other comments to the condition? Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. I, I just want some clarity on the wording on the condition. So my understanding the way it's worded, especially the part that says plan shall be submitted to Council for review, so that's, we're, when that plan comes back to us we're

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

accepting the plan, but we're reviewing it? Because we're not going to vote on the plan and approve it or disapprove it; is that correct?

CHAIR MOLINA: Let me ask Member Anderson for clarification.

COUNCILMEMBER ANDERSON: Thank you, Chair. You know, no, the State Historic Preservation Office and the Office of Hawaiian Affairs have the approval authority. We don't have any approval authority. So the word review is just the best word I could come up for us to look at the plan. And if the preservation plan says that, you know, a cluster of sites need to be preserved in situ which means in place without any destruction, then that would give us the opportunity to put a Conservation Easement on it, you know, condition for a Conservation Easement or adequate buffer zones. Just that would allow us to put a condition that upholds the approved preservation plan's conditions.

COUNCILMEMBER MEDEIROS: Okay. Mr. Chairman, yeah, I, I think Member Anderson answered my question on her first two sentences that we won't be reviewing it to approve it, that it will be already an accepted plan and that the State Historic Preservation Office is the approving agency and that's my understanding, because I would have hated to add another layer of bureaucracy to this process by bringing it back to us for another review and approval. So that gives me some clarity on the process now. Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Committee Members, any other comments on the proposed condition before the Chair calls up the applicant for his comments? Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. And I thank Mr. Medeiros for asking that question. I'm not, I'm not comfortable leaving that last sentence in, and I'm not comfortable for, for several reasons. One is that initial approval process is not ours; two, I firmly believe that it's time to let the professionals make, make that decision, you know, in being able to deal with the developer or the applicant. And I think for it to come to us when we have absolutely no expertise I think is a mistake. And, you know, for, for me I just have difficulty in looking at this and saying the professionals are going to do the report, the report's going to come to us, we're going to review it, and now we we're going to have the opportunity of questioning the, the rationale of why these professionals are telling us these things.

And we, we had the opportunity of listening to Mr. Hinano Rodrigues here. It sounds like they're pretty persistent. And as he said in review of the AIS, if they recognize on a project site one, you know, that identified 1 to 18 historic sites, one of the questions they're going to be asking the, the developer is how are you going to preserve these sites? It seems that they're pretty consistent in trying to reach a resolve prior to their hammer. Their hammer is called an approval. So for us to have the additional step to me is just not an appropriate advantage at this time. And it's not that we're going to renege our responsibilities, I just think that these are the professionals who know how to do their job best, and if there are recommendations on site then that can be addressed directly with the, with the applicant.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

So I don't have any problems with the above. I do have a concern about leaving the last sentence in, and when appropriate I am ready to amend the motion to remove the last sentence from this condition. Thank you, Chairman.

CHAIR MOLINA: Thank you, Mr. Mateo. Committee Members who have not spoken yet if you would like an opportunity now is the time, and then I'll call up the applicant. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yes, Chairman, this is for the Planning Deputy Director. In, in the Phase II approval I understand the Planning Commission does review the application again.

MS. SUYAMA: That's correct.

VICE-CHAIR PONTANILLA: And part of the review process is to review Historic Preservation conditions as well as, if this thing goes forward, the Critical Habitat Condition --

MS. SUYAMA: That's correct.

VICE-CHAIR PONTANILLA: --once they get the information from SHPD?

MS. SUYAMA: That's correct. Normally, when the Phase II Project District comes in it is a public hearing process with notification requirements, but the Commission is the authority that grants the approval. Normally, what would happen is that when the application comes in it will be sent out back to the agencies for review to the documentation for their recommendation and, you know, whether there's, you know, additional mitigation that needs to be conducted.

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

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

COUNCILMEMBER VICTORINO: Everybody else said something so I guess it should be my turn, right?

CHAIR MOLINA: You're more than welcome to say...

COUNCILMEMBER VICTORINO: Thank you.

CHAIR MOLINA: Yeah.

COUNCILMEMBER VICTORINO: I sit patiently waiting to see what comes about, but I tend to, after listening to all parties, first of all, I'm impressed with what SHPD came and said tonight. I think they've reinforced in my mind that these agencies are, they're doing their due diligence, so I'm very happy, and I'm happy to see Mr. Rodrigues and Ms. Pickett here to say we're going to be on these guys and get it done right. So with that in mind I'm going to have to tend to agree with my colleague Mr. Mateo. And I guess the two bookends always seem to come together on this deal.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

That the last part about the, the plan shall be submitted to the Council, I wanted that, because I thought we, you know, really do need that at the end. But if these agencies do their job, I'd like to see the, the plan after it's done, but I don't think then I would have a concern about changing it, because if these experts have done the job right, then we've done our job by making sure they did their job. And I think this is how the process, and now Ms. Suyama has confirmed in my mind that, that Phase II, the Planning Commission involved again; am I correct in saying that?

MS. SUYAMA: That's correct.

COUNCILMEMBER VICTORINO: Okay. So I mean there's another check and balance in all of this, you know, and we have very good commissioners on that Planning Commission. So, you know, I've got people I think that really protects the public. We're the first line, we're going to make sure this is done right, but for it to come back, and I, and, you know, again Ms. Anderson, I agreed with you in the beginning that I wanted it to come back, but maybe this is just another redundancy now that I've seen the whole picture and heard the various parties concern that I would probably support an amendment to remove that last part and that way this can be done, be done by the experts, and, and at least now the developer's been put on notice that, hey, your people have to do it right, because the people who are in charge both SHPD, OHA, and all the other approving agencies all are, are, are people that are out there in the cultural and as far as historic districts, and also our biological community want to make sure that this area is preserved. Like I said earlier once lost, lost forever. So we're not going to lose it, we're going to have them do it right. So I have to support Mr. Mateo in his, his saying. So when that comes about I will hopefully second his motion when he brings it forward. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. The Chair will call up the applicant, Mr. Jencks, for his comments, and then I'll turn the floor back over to, for one last go around for any additional comments on the condition. Mr. Jencks.

MR. JENCKS: Thank you, Mr. Chair. Just commenting on the Historic Preservation Condition. I think it's fine. However I do support Mr. Mateo's recommendation.

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

COUNCILMEMBER ANDERSON: Thank you, Chairman. You know, Members, if you take a look at the map that was passed out, and you see where all the sites are...*(change tape, Side 2B)*...identified, they're all in the southern portion, they're all in an area that is slated for residential. The reason I want this to come back to the Council is because we are the only body who has the authority to make a condition to preserve an area. Say all these sites in a cluster are significant enough to be saved, we could put a condition in to make this a cultural preserve area. Nobody else is going to do this. The Planning Commission is not going to do it, the Cultural Resource Commission is not going to do it, State Historic Preservation is not going to do it. They are going to allow these sites to be landscape features in somebody's yard. And if you don't believe me you just go look at the historic sites that we've saved so far if you can get behind somebody's gated fence. And I'm talking about all the sites so far saved in Makena

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

except for Palauea. Palauea that was saved years ago and still it hasn't been developed in a cultural park like it's supposed to be. The koa down at Makena or down at Palauea it's behind somebody's gated yard. Nobody can see it anymore. It's a landscape feature for someone's private, you know, enjoyment. Who knows what shape it's in. It can't even, you know, can't even be used by cultural practitioners for its stated purpose anymore because it's blocked off from the ocean with a house. If you want historic sites on a golf course, a private golf course sure you're going to preserve it, but who's going to get to interpret and, and be educated by it? You know, if you can pay 300 and up to play golf maybe you'll get to see it.

That's the whole point, Mr. Chairman, is to raise the bar here while we still have something to save, you know, and, and save it in a manner that we can actually utilize it for educational and enrichment of our citizens and our keiki. But if you just turn it over, you know, that's why our application requirement says a preservation/mitigation plan in the application, so we would have the choice when we approve this or not, to set aside a condition that says this is worthy of a Conservation Easement, so that no development takes place, so that there is free and open public access, so that we can bring children down for educational purposes just like they do up at Honokowai. If any of you have had the opportunity to go up there and see a historic landscape revitalized, and it's like stepping back in time. And there are so few places left where we have that opportunity, and here's an opportunity. And in our community plan it says the, the cultural sites in the southern most region are of utmost value and should be preserved. Now, if you want to turn that over to people who don't have the authority that we have, then take that last sentence out, and you might as well kiss these sites good bye, 'cause even if they preserve them we're never going to see them. They're going to be on somebody's private lot and most likely behind a fence. And, you know, site after site has been treated this way in Maui County since the last generation of kupuna passed on. And, you know, I was hanai to our County Historian Inez Ashdown, and she taught me the value of these sites. It was because of her and her hui that the, the village at Palauea was even saved. And, you know, now that they're gone there's nobody standing up for these sites in a manner that really respects them, in a manner that is able to represent the ancient Hawaiian cultural landscape to people in an interpretive fashion that means something. You know, if they just preserve one site here and one site here all disconnected on somebody's private lot it means nothing. On paper, oh, yeah, we preserved it, but what good does that do? It does no good whatsoever. Thank you, Chairman.

CHAIR MOLINA: Thank you, Member Anderson. The Chair would like to ask Corp. Counsel a quick question related to a cultural site that's on private property. For cultural practices, by law can a member of native Hawaiian ancestry or a, a group for that matter, can they go on to the private property to, I guess, look at the site or do any type of cultural practices, assuming there is consultation with the landowner? Mr. Hopper, are you able to respond to that?

MR. HOPPER: I'd have to see the circumstances of the, the case. I mean the Hawaii State Constitution does provide, you know, for native Hawaiian gathering rights, but as far as how that, how that melds with private property rights can be very complicated in, in certain situations. So I, I would have to know the specifics of the situation.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. Thank you. Mr. Medeiros followed by Member Johnson.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I'd like to know also, you know, Member Anderson brought up about sites that, you know, are no longer accessible by Hawaiian groups or Hawaiian individuals. When did this preservation plan law become in effect, because what happened to all the other sites that supposedly were preserved if they're no longer accessible? I mean was the preservation law ineffective/ I don't know if Corp. Counsel can answer it, Planning, or maybe somebody like Member Anderson that has a lot of tenure here?

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: What happened to those sites?

CHAIR MOLINA: Well, let's, let's pass the ball over first to the Planning Department, and see if Corp. Counsel has additional comment. Director Suyama, any way you can respond to Member Medeiros's question?

MS. SUYAMA: Normally, the Department takes the recommendation of State Historic Preservation. When, after the archeological inventory survey is completed there are recommendations as to whether certain sites should be preserved. Some are just determined for informational purposes. If it's determined that sites are to be preserved at that point the applicant would, or the developer would do their preservation plan which is again submitted to State Historic Preservation. And then those plans State Historic Preservation reviews it as to the method of preservation. A lot of times they'll tell that they want buffer zones along the area that's to be preserved. They also sometimes talk about the rights.

COUNCILMEMBER MEDEIROS: Okay. Ms. Suyama, my question is accessibility and...

MS. SUYAMA: Right and sometimes in those preservations plans they will talk about making sure that the native Hawaiian population who have maybe some connection to the site has access to it and that's written into the preservation plan.

COUNCILMEMBER MEDEIROS: So apparently that didn't happen to the sites that Member Anderson describes as being accessible...

MS. SUYAMA: I, I'm, I'm not sure what the specific circumstances are, but it all is generated from State Historic Preservation as to what needs to be done. And, normally, the Department as well as the Commission takes that recommendation into, into consideration when they make their approval process.

COUNCILMEMBER MEDEIROS: So if State Historic Preservation says that, okay, site 1596 needs to be preserved and accessible they determine who provides the accessibility?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

MS. SUYAMA: They're the ones that work with the applicant to come up with a plan as that's acceptable to State Historic Preservation as to how access is going to be maintained.

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

CHAIR MOLINA: Thank you. Member Johnson followed by Member Anderson.

COUNCILMEMBER JOHNSON: Yes, and, and, and I can tell you in an instance that the first way you prohibit Hawaiian people from coming and accessing the site is you file a restraining order on them because they have committed some kind of threatening act or they don't have a key to the gate. That's the first way you keep Hawaiian people from accessing burial sites and cultural sites. And believe me I have seen it all over. So, you know, for us to be so foolish to think that there aren't ways to keep people that you don't want in your backyard, because they might steal something from you, or they might access an area that, you know, might disturb people that is one of the things I have seen done. And it's not pleasant, and I have friends who exactly experienced that. So it's very difficult, Mr. Chair, to sit here, and isn't it ironic that we're sitting here, Members are sitting here being critical of State Historic Preservation Office and even in some regard the confusion created when we got letters from Office of Hawaiian Affairs who had not previously submitted correspondence that we are now somehow miraculously entrusting them with this epiphany to look over stuff that they have not previously done? I'm not going to abdicate that responsibility, and I think the condition should stay. There is no assurance, Mr. Chair, that institutions that have historically been under-funded, have historically been challenged, that simply have personnel changes, there is no assurance that this is going to continue. And I have seen it time and time again that approval, after approval, after approval, yes, we do it, but if the agency doesn't have the manpower to enforce we are the enforcers.

So, Mr. Chair, I will not support anything that doesn't give us the ability to put a requirement in it based on a recommendation from these agencies that we can put some teeth into it, because otherwise it is meaningless. And so I'm sorry I get upset, but this has just continued for far too long, and I'm not going to continue to be a party to it when I don't believe that the agencies over time have shown that they are capable of doing these things. I don't mind that they make recommendations, that's great, but we are the ones that put conditions in not these agencies. So, you know, with all due respect, I support Ms. Anderson's recommendations and I believe that the Council, if we don't believe these agencies are adequately addressing the problems, then by God when are we going to put these conditions in? Thank you.

CHAIR MOLINA: Thank you, Member Johnson.

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Mr. Pontanilla?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

VICE-CHAIR PONTANILLA: Thank you. Earlier this evening we had a representative from SHPD here, if they could come up forward I just want to ask them a simple question in regards to the preservation plan that is drawn up?

CHAIR MOLINA: Okay. Members, any objections to having Mr. Rodrigues or Ms. Pickett come up to respond to questions?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. The Chair would like to make a comment, before we have Mr., Mr. Rodrigues and Ms. Pickett come up, in response to Member Johnson's concerns. You know, the issue of enforcement and staffing departments is also a problem that the County faces with its various agencies, so it's not only the State that has problems. So, you know, just food for thought, Members. Mr. Rodrigues question from Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. Thank you, Mr. Rodrigues and Ms. Pickett. My, my question is very simple. When you work with the developer to come up with a preservation plan, how closely do you monitor the plan?

MR. RODRIGUES: Your question is related to the plan, the, the development of the plan or subsequent to the acceptance?

VICE-CHAIR PONTANILLA: Well, the development of the plan to ensure, you know, what the Members are asking, adequate easements to, to get to the sites, number one. In this case here, you know, you do have family, multiple-family designation along with golf course. And in my mind I'm picturing something like Maui Lani, not Maui Lani, but Mauna Lani on the Big Island where they preserved a lot of cultural sites around buildings as well as around a golf course. And, and I don't know who came up with that plan, but I'm, I'm sure SHPD must have had a lot of inputs in regards to creating that type of plan for the Big Island and the Kona area. So in this case here how do you, how do you develop a plan with Honua'ula so that all of these conditions can be met?

CHAIR MOLINA: Mr. Rodrigues?

MR. RODRIGUES: It, it's sad to say that Ms. Anderson and Ms. Johnson are correct. As a matter of law there is nothing that we can do with respect to access. State, State Historic Preservation is divided into two parts, one is archaeology and one is burials, and I'm really in charge of the burial program, and Jenny is in charge of archaeology. I have a stronger law on my side when it comes to burials, but as a matter of preservation, as a matter of an archaeological, archaeological feature preservation we work with the, with the developer, and this is, I do have a juris doctorate. I also have a law degree, and I have a Hawaiian Studies degree, and I have not seen any law that says that if SHPD says that the partners at Honua'ula must provide access that I can actually force them to do so. The access has always been a part of our Maui way of doing things, which is we sit down, we talk story, and you let 'em in, and everybody's happy. But as a matter of law

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

I, I don't think I can force them to do it, but when it comes to burials I might. There has been no developer on this island who has denied access when I've asked for it, but Councilwoman Johnson is correct, because there are many, many ways of denying our people access, and I, and I see it.

Let me explain how archaeology, how State Historic Preservation has worked and is now working. Prior to two years ago there was really no such thing as a cultural historian or nobody quite understand the role of the cultural historian. Everything was archaeology and even 40 years ago most of your understanding of let's save an archaeological site was a heiau, and you did not see any value in, in anything less than a heiau. Well, that has changed. Forty years has gone by. A house site itself is valuable. Now we have cultural historians who come in, we take your archaeological feature and we humanize it. We talk about the people that actually lived there. So now you end up with what is known, and this new language today, now we end up with what is known as cultural landscape, and I believe Councilperson Pontanilla talked about that on the Big Island.

On the Big Island the people there are a lot more proactive, and, and that is what we need to do is to learn from them and come up with this cultural landscape so that we don't end up with situations as Councilperson Johnson said, we got these little pockets of preservation sites in somebody's back yard, in Wailea, that is behind an electric gate, 'cause she's right. Stop and think. All these archaeological sites that we've saved in the last ten years, do you see it? You don't. Nobody sees it.

MS. PICKETT: Okay. I understand it just a little bit differently. The preservation plans as, as I, as I understand it is as of 2005, I believe, there was, there was something that instituted that a preservation plan will be upheld or else they'll be subjected to fines and so forth. In the preservation part of, part of the process is once the preservation plan or any plan is submitted to the SHPD there's a 30-day public review comment period which is where the consultation process really comes in. That's the time for people of the public and the community to come forward and share with us their concerns, and then in turn we work with the archaeological firm in order to mitigate and come to some type of agreement as far as each one of those preservation issues are concerned. And there is actually an itemized list of things that should be included in the preservation plan that's found in the Hawaii Administrative Rules. There's, there's guidelines for every one of the archaeological reports that are submitted by the firms to our office. So I believe there has been some recent legislative rulings that, that actually do give a preservation plan. I mean we can check on that too.

MR. RODRIGUES: Yeah, let me explain that. Actually, Jenny is right. But that, that 2005 law does not cover access. It covers the destruction of a preservation site, and I think the fine is 25,000. So if, if they violate the preservation plan we step in, and we fine you \$25,000. But with regards to access I'm not too sure, but we do have State law, and I think we have three provisions in the State law and one is your PASH decision that says Native Hawaiian rights shall have access. But read PASH very carefully, because I think PASH really talks about undeveloped lands.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCILMEMBER ANDERSON: Undeveloped.

VICE-CHAIR PONTANILLA: Thank you, Chairman. Thank you, again, Mr. Rodrigues and Ms. Pickett for clarifying that. You know, it's good, good to know about these things here, and I'm surely happy that you guys, you know, stuck around, yeah. So thank you, Chairman.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Thank you. Mr. Victorino.

COUNCILMEMBER VICTORINO: Yes. Okay. Now, now that I'm totally confused, no problem. You know, I go, I go this way I think I got it down, and then I go that way, and I think I got it down, now you got me going every which way. Let me get this clear. You have laws, which are State laws, that cover a preservation of sites, burial sites, historical sites, cultural sites, all of the above.

MS. PICKETT: Right.

COUNCILMEMBER VICTORINO: Okay, and biological sites; no?

MR. RODRIGUES: No, that's not under State Historic.

COUNCILMEMBER VICTORINO: Okay. It's not under State Historic. Okay. So it's another area. Okay. So I'll leave that out. And you have, according to you, 2005 the rules or the laws were changed to have fines for any destruction of site, but still nothing as far as accessibility to these sites?

MR. RODRIGUES: As far as I know, you're correct.

COUNCILMEMBER VICTORINO: Okay. And so if the Council says we must allow accessibility to these sites where does that fall with the State?

MR. RODRIGUES: That's, that's your prerogative.

COUNCILMEMBER VICTORINO: That's our prerogative.

MR. RODRIGUES: I believe that's your right.

COUNCILMEMBER VICTORINO: So we could, we, we could demand that any of these sites or any preservation plan that comes out that all of these above sites would be accessible through perpetuity that they cannot ever be closed out to anybody?

MR. RODRIGUES: That's a question that your Corporate[sic] Counsel would have to answer, but sounds good to me.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCILMEMBER VICTORINO: Okay. So I go to Corporate[sic] Counsel if I may, Mr. Chair?

CHAIR MOLINA: Okay. Mr. Hopper?

COUNCILMEMBER VICTORINO: Corp. Counsel, if we put something of that nature out where accessibility is in perpetuity, we can never deny accessibility to these cultural, historical, burial, or all these above sites that, that State Historic has brought up tonight, can we do that?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: I need to see your specific proposal and off-hand I would see some concerns with that that I could go over with you in executive session, but I'm not comfortable discussing that particularly on the record.

COUNCILMEMBER VICTORINO: Okay. Okay. Thank you. I, I guess I didn't get an answer that I was hoping to find somewhere, but thank you I, I appreciate everything you guys are doing it's just that I am, getting kind of late, getting kind of tired, and kind of trying to and figure this all out, because I want it to be fair to everybody, and I do not want to lose what we have. And I guess that's what I'm trying to get to without being over, overburdening any one particular entity, but protecting what is there for the people of Maui County. Thank you. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino, and you're correct it is getting late. So, Members, the Chair would like to, I believe Member Mateo had a consideration --

COUNCILMEMBER ANDERSON: Chair.

CHAIR MOLINA: --for us to consider with regards, hang on, to this condition proposal from Member Anderson. Member Anderson?

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. You know, I just want to reiterate to everybody that the purpose of State Historic Preservation, and I'm reading right out of the Preservation Rules for Chapter 6E-42 projects, which is what this project is, it's requiring a Change in Zoning. The purpose of this chapter is to promote the use and conservation of historic properties for the education, inspiration, pleasure, and enrichment of the citizens of Hawaii by articulating a historic preservation review process for projects requiring the approval of a State or County agency for a permanent licensed land use change. That's what the regulations are written for.

We have the legislative authority under Chapter 6E-15, it provides the County Council and, Members, I've passed this out in August, that gives us the legislative authority to impose special conditions or restrictions on a Change in Zoning request to protect, preserve, and enhance historic properties. That's why we need the preservation plan now so that we have the right to impose these conditions. And it reads, in addition to any power or authority of a political subdivision to regulate by planning or zoning laws and regulations or by local laws and

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

regulations that governing body of any political subdivision may provide, by special conditions or restrictions, for the protection, enhancement, preservation, and use of historic properties or burial sites. These regulations, special conditions, and restrictions may include appropriate and reasonable control of the use or appearance of adjacent or associated private property within the public view or both, historic easements, preventing deterioration by willful neglect.

These are our rights as a Council. This is in the Chapter 6E review legislation. This is a State statute that gives us this authority. We are the only ones with this authority, Mr. Chairman. And I just want to give you one brief, you know, scenario. At Palauea, sorry at Poolenalena, when they developed that point there was a koa there that was sited for preservation, a fishing koa, a shrine, religious significance. It went through the preservation process. It was sited to be preserved inset. It's still there today, I think, unless there's a, you know, hibiscus bush on top of it by now. But, and in the preservation plan it stated that it should be available for access to Hawaiian, to Hawaiian people. By telephone, you call the owner and ask for permission, but there was nothing in that preservation plan that said you can't fence it off from the public, that you have to put the phone number on the fence so that people know there's even a historic site there, and you know what, it's not just for native Hawaiians, everybody here wants to learn about the Hawaiian culture not just the Hawaiians. Every visitor that comes to this island craves to know about ancient Hawaii, and what do we present them, nothing. You know, you got to go buy it at a luau -- to preserve historic properties for the education, inspiration, pleasure, and enrichment of the citizens of Hawaii. That's why we have the authority, Mr. Chairman. If we had a preservation plan in front of us that said these sites are worthy of preservation we would have the ability to put a Conservation Easement in place. That's what I attempted to do. I can understand the Members' hesitation, but if we get the chance once the preservation plan is done for it to come back for us, and to us for us to say well it looks like the preservation plan needs some help in order to allow access, in order to put special conditions or restrictions for the protection enhancement of the site. We're the body that has the authority to do that. Nobody else can do it. That's why we need to have it come back to us in case we need to do that because, you know, there are significant sites here, Chairman. And if we're going to just let them break them all up and save a few, on this list we have so far they're only going to save two, the stepping stone trails and destroy the rest of the habitation there. That's a story lost and that stepping stone trail will be a garden trail in somebody's yard. And how is that respectful? And how is that allowing us to preserve this for the enrichment of the citizens of our State? That's why we need to have this come back for our opportunity to put in a condition that would actually make these sites viable for educational and enrichment purposes. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Before I recognize Member Johnson any other questions for SHPD so we can excuse them?

COUNCILMEMBER MATEO: Chairman.

COUNCILMEMBER JOHNSON: I just have one question.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. All right. I'm sorry, Mr. Mateo, I had Member Johnson had her hand up first, and I'll recognize you as soon as she's done.

COUNCILMEMBER JOHNSON: And, and my only question is in some of your preservation plans when you ultimately see that they're approved is it always that every site be completely accessible or are there some really fragile sites where you would recommend that no access be granted or limited access be granted?

CHAIR MOLINA: Okay. Who would like that question? Ms. Pickett?

MS. PICKETT: I, I believe there are. I believe that's also where the consultation process, I, I, off the top of my head I can't think of any specific project where that is the case, but, but I know there is an avenue for that as well so.

MR. RODRIGUES: And with specific respect to Hawaiian burials, because that's kind of like my program, if the family says, no, we don't want anybody to know, then it's locked up in a drawer in my office. Nobody knows.

COUNCILMEMBER JOHNSON: Yeah, because I, I think of the Ritz Carlton burial site as one of those sites where it's not appropriate to just go traipsing across that whole area. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Any other questions for SHPD before I excuse them? Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you. Real briefly. I, I believe Member Pontanilla's original question was after you do your, your study and you complete your report do you follow-up on it to see that your recommendations had in fact been adhered to?

MR. RODRIGUES: The report is not written by us. The report is actually written by the contracted archaeologist for your applicant. No.

COUNCILMEMBER MATEO: There's no follow-up?

MR. RODRIGUES: There, there's no staff. Jenny and I spend a lot of time trying to do our office work and go out there into the field and inspect all these places, but bottom line answer to you, Mr. Mateo, is no.

COUNCILMEMBER MATEO: Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. All right. Members, the Chair is looking at the clock. At this point the Chair will, again, is there, is there any other considerations to the current condition...*(change tape, Side 3A)*...which is, which includes the plan shall be submitted to Council for review and project shall be subject to additional conditions by the Council if warranted by approved preservation/mitigation plan. Okay.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCILMEMBER MATEO: Chairman.

CHAIR MOLINA: Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, I wish to amend the motion by removing the last sentence from the condition.

CHAIR MOLINA: Okay. Is there a second to the proposal to amend?

COUNCILMEMBER MEDEIROS: Second.

CHAIR MOLINA: Okay. Seconded by Mr. Medeiros. Mr. Mateo, as the maker of the motion any additional discussion?

COUNCILMEMBER MATEO: Chairman, I think we've gone the gambit. I think we have kicked the dead horse long enough. So I think we should be ready to put it to the vote at this much, because I think we're all passionate in the same issue, and we just need to vote on this.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. And the Chair would like to offer his comments. Again like we had on a previous condition which was related, I guess, I believe to wastewater do we as a Council want to add ourselves as a reviewing agency doing the work of what many consider to be an administrative responsibility? That is a question we have to wrestle with. And as you can tell we have a lot to do, so I just wanted to share that thought with you that that is a path we want to start to follow and be consistent with all applications in the future whether it be big or small applications. Whether you have a ten-unit project or a 1,400 unit project, then we need to be consistent. And if we're going to do this it's going to be precedent setting, because you cannot apply something like this to just one particular application. You need, what you apply for one should apply for all. So I will leave it at that.

All right. We have an amendment to the condition to remove the last sentence from the Historic Preservation Condition. The Chair will call for the vote for the amendment. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: The Chair votes aye. Those opposed?

COUNCILMEMBER ANDERSON: No.

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: Okay. Two noes for the record Member Anderson and Member Johnson. The last sentence has been removed from the condition.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

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

NOES: **Councilmembers Anderson and Johnson.**

EXC.: **Councilmember Hokama.**

ABSENT: **None.**

ABSTAIN: **None.**

MOTION CARRIED

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

CHAIR MOLINA: We're back to the main motion as amended. Any other discussion? Member Johnson?

COUNCILMEMBER JOHNSON: While I support this condition, because I think it's just been gutted, it's, I respect the State Historic Preservation Office and the Office of Hawaiian Affairs, but we are the individuals who impose conditions and, therefore, with the, the condition, Historic Preservation Condition as amended, I cannot support it, because I believe that all of the criticism that has been launched this evening, and all of the questions that have been asked, and what has been answered is that there is no capability, other than through the Council, to actually impose these conditions. And, therefore, with all due respect, and I know Ms. Anderson is the maker of the motion, you know, I, I hope she's not disappointed in me, but I just cannot support it in this form, Mr. Chair. I just think it's meaningless. Thank you.

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

COUNCILMEMBER ANDERSON: I totally agree with Member Johnson. This really means nothing now, because they're going to have to do this anyway. They can't touch anything on this land until they get an approved preservation plan. And by not allowing the Council our option of putting in a condition that will make the preservation plan actually meaningful, then it really means nothing. You know, we're not precedent setting here, Mr. Chairman. You know what we're precedent setting, is we're allowing an application to go through that didn't complete the application requirements, because if they had done what they were required to do by our County Code and our Change in Zoning application they would have presented a preservation plan with their application, and then we could be making conditions today on that preservation plan.

You know, we could say, well, the preservation plan says you got to, you know, save this whole cluster, and you, you got to save this cultural landscape. So, therefore, we're not going to let you

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

build any houses here. We're going to put a Conservation Easement around this whole cultural landscape. We would have had that opportunity and that option. That option is gone now. This condition means nothing.

CHAIR MOLINA: Thank you, Member Anderson. Members, any other comments on the condition as amended, or the motion as amended? The Chair would just like to offer his comments. Again it's the Chair's belief, well, something is better than nothing, and we need to leave it to the respective agencies. That's why these agencies were corrected. The question for me, is it our kuleana that the SHPD does not have the appropriate staffing? And it's, you know, it's, it's sort of out of our hands, but nevertheless they're an agency that has been entrusted with the responsibility of reviewing these sites and the cultural plan. And it's just an unfortunate set, set of circumstances that the department is experiencing. And as I reiterated earlier it's not only the State that has been subject to a lot of, or lack of personnel, even our own County agencies. We have a difficult time enforcing our own laws. So it is an epidemic that's, you know, prevalent with both the State and County agencies. And it's unfortunate Ms. Kirkendall was not available here to respond as well from SHPD to shed some additional light on the issue, but it is what it is, Members. The Chair will call for the vote. All those in favor of the motion as amended signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: The Chair votes aye. Opposed?

COUNCILMEMBER ANDERSON: No.

COUNCILMEMBER JOHNSON: No.

COUNCILMEMBER VICTORINO: No.

CHAIR MOLINA: Okay. We have three noes, Member Anderson, Johnson and Victorino. We have eight, Committee Staff? We have five ayes, three noes to confirm, and one excused Member Hokama. The condition passes as amended.

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

NOES: Councilmembers Anderson, Johnson, and Victorino.

EXC.: Councilmember Hokama.

ABSENT: None.

ABSTAIN: None.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: Okay. Members, we have one more condition the Chair would like to address before the Chair calls for a recess and that is the Critical Habitat Condition. Member Anderson, you have the floor.

COUNCILMEMBER ANDERSON: The Critical Habitat Condition reads as follows. "WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall provide the report 'Remnant Wiliwili Forest Habitat at Wailea 670, Maui, Hawaii by Lee Altenberg, Ph.D.', to the Department of Land and Natural Resources of the State, the United States Fish and Wildlife Service, and the United States Corps of Engineers for review and comment prior to Phase II approval. Review and comments regarding the conservation value of the lands contained in the report shall be submitted to the Council for review and project shall be subject to additional conditions or amendments by Council if warranted by reviews."

CHAIR MOLINA: Okay. Is there a second?

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: I'm sorry. I'm sorry did you formally make a motion, Member Anderson?

COUNCILMEMBER ANDERSON: I didn't get a chance.

CHAIR MOLINA: Okay. Sorry. Go ahead. You can go ahead and formally make the motion.

COUNCILMEMBER ANDERSON: Yeah, so I, I, move to amend the main motion with this condition, Mr. Chairman.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: Okay. It's been seconded by Member Johnson. Discussion? Member Anderson?

COUNCILMEMBER ANDERSON: Chairman, the condition that I'm requesting again upholds the Change in Zoning application requirement for the identification of environmentally sensitive areas, habitat, and botanical features, and exceptional trees, and a preservation/mitigation plan and comments from the Department of Land and Natural Resources, the United States Fish and Wildlife, United States Corps of Engineers. If we had an acceptable preservation plan that had been reviewed by these people this wouldn't be necessary. But since that didn't happen I am proposing this condition to see to it that we have some chance of saving the critical habitat and the magnificent wiliwili forest that still remain in this area.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. Thank you, Member Anderson. Committee Members, additional comments? Member Johnson?

COUNCILMEMBER JOHNSON: Yes, and if people seem to have a wavering faith in SHPD as well as some of the, I guess the other agencies I, I would venture to say that the Department of Land and Natural Resources and U.S. Fish and Wildlife has even a poorer record of upholding environmental law. And I have long, you know, kind of wondered why we even have some of these agencies reviewing when the same conditions and the same situations continue to plague these agencies. When we have habitat destruction, when we have DLNR, you know, forever they have been complaining that they don't have enforcement capability. We are the last bastion. We are the, the people's representatives who really are looking at what can be done to preserve and protect their interests. And when those individuals come to us, and they ask us where were you when you were supposed to be protecting our interests, and because there's no condition attached I have seen development after development where there are no conditions attached there are no teeth. If we think that these agencies are going to enforce, well, dream on, because they're not going to. So I will once again, if a motion is made to gut this particular ordinance or this particular amendment, I will oppose it, because they're not, they're not doing the job. They just simply are not doing the job. And if I don't trust them, and if the general public does not trust them, then who do they look to but us as their representatives. And I do not want to disappoint my constituents and future generations when they look at what is happened, and they look at who has let it happen. So I will be supporting this amendment without any further alterations. Thank you.

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

COUNCILMEMBER MATEO: Chairman, thank you very much. And I just think it's time for me to say my peace, yeah, because it just sounds like because we didn't support the motion as it was submitted to us that all of us does not have a concern or an issue about the preservation of the Hawaiian artifacts, the Hawaiian culture, protecting our 'iwi, protecting our aina, and that is the farthest thing from the truth, Chairman. I think we have allowed to provide OHA and to provide the State Department the opportunity to do their job and the opportunity to do their job because effective with this project, Wailea 670, we as a body have put them on notice. Do your job, because we somehow are being blamed for their inability to get it done. And I think the time has come for us to stand tall because, Mr. Chairman, I move to amend the motion by removing the last sentence of the condition.

CHAIR MOLINA: Okay. Is there a second to the motion to amend to remove the last sentence? Member Baisa, is that a second?

COUNCILMEMBER BAISA: Yes.

CHAIR MOLINA: Okay. It's been moved by Member Mateo, seconded by Member Baisa to remove the last sentence which states, "review and comments regarding the conservation value of the lands contained in the report shall, I guess, I presume be submitted to the Council for review and

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

project shall be subject to additional conditions or amendments by Council if warranted by reviews.” Additional discussion, Mr. Mateo --

COUNCILMEMBER MATEO: Chairman, I...

CHAIR MOLINA: --followed by Member Baisa.

COUNCILMEMBER MATEO: Chairman, no. You know, I, just, just a side note, I think at this particular point I think my original amendment would have done, you know, gone a lot farther had we looked beyond our noses because, you know, I, I really have a lot of aloha for Ms. Anderson because she speaks with passion and that's, that's really, that's really a sensitive part in us being able to listen. But my own personal feeling is that we don't have the expertise, Chairman, and I take my lead from these people back here who spoke to us, you know, and timed, you know, if they come to us, and they say some of, some of their, I guess recommendations no more teeth, well, it's time to deal with the State directly and that's their kuleana as well. So if no more teeth, you know, help develop, help us develop something that will get the bite.

OHA, I give them, I have a lot of, I have a lot of belief in OHA. They made it real clear of their, their position, and I need to give them their due diligence and their respect in, in doing their own assessment of this particular project, Chairman. And I don't think it's taking anything away at this particular point, because they have the opportunity for this application to again be reviewed in, in Phase II. So I just feel that we need to be real clear in understanding that this amendment does not in no way or means take away from our concern for the Hawaiian culture and the preservation thereof. So having said that, Chairman, thank you for this opportunity.

CHAIR MOLINA: Thank you, Mr. Mateo. Member Baisa, as the seconder of the motion.

COUNCILMEMBER BAISA: Chair, I have been trying to not get too involved emotionally in this discussion, but I think it's important that I say what I'd like to say. First of all, I'd like to say I support Councilmember Mateo's statements, and I feel very similar to how he does. But I do want to say something that I say with great reluctance and that is we are also guilty. Even though we may make rules, and we may review a project, of not doing a good job of enforcement and following up on the conditions and things that we impose on other people. I have been here now, this is, I'm in my 11th month as a new Council Member, and I have seen over and over where we have imposed conditions, and we have laws, and we don't do a really good job of doing much better than some of the people that we're pointing fingers at. So somebody, a wise man told me that when you point a finger at somebody, three point back at you. And I think that all of us share in where we are, and what has been done and what has not been done. And I would like to give this system an opportunity to work. I think that this has provided all of us with a great opportunity to learn about what the State Historic Preservation Office has endured and what they are enduring, which is very similar to the problems we have here at the County as you've already stated, not having enough things to, you know, people to do the things and not having the ability to follow-up on things we very much would like to do. And the same thing with OHA. We need

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

to involve OHA. They are our Hawaiian organization. We need to let them do their job and to work with them as partners. So I don't think we take anything away from the importance of our Hawaiian culture. For people who do not know my husband is a native Hawaiian, my mother-in-law was pure Hawaiian. I was, I have spent many, many years immersed in the culture. My daughter is married to a native Hawaiian. I have native Hawaiian grandchildren. I care very much about Maui. This is, this is my land, this Maui County, this is my aina, this is where I was brought up, this is where my grandparents came in 1878. This is home. I care very much, but I also think that the Council has its limitations. You know, all of us on this Committee have long committee agendas. We have tons of work that we need to be doing. And so I agree with you. I think it is really important that we allow the departments who have the authority, the organizations who have the expertise to do their job. And I agree totally with Member Mateo that the time has come for us to say, do your job, and we will help you. We will work with you. But I don't think we can step in and do everybody else's job, because we just can't do it. Thank you.

CHAIR MOLINA: Thank you, Member Baisa. Members, additional comments on the amendment to the motion which is to delete the last sentence of the condition? Okay. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, Mr. Chairman, can I ask a question about the condition, or just, we're just on the amendment?

CHAIR MOLINA: We're on the amendment.

COUNCILMEMBER MEDEIROS: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you. If there's nothing else to be said on the amendment to the condition, the Chair has already shared his views on the issue of the Council review for this matter, and like many of you we're all passionate. I don't think there's not one Member of this body that isn't concerned about the issues, cultural issues related to this proposal. So, again this is the question of do we want to add additional work on top of the other work that we have which may impede us from addressing other matters in the community? That's, that's an issue we have to wrestle with. So, that's all I'm going to have to say on this matter for this time on the amendment. The Chair will call for the vote. All those in favor of the amendment to remove the last sentence of the Critical Habitat Condition signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: The Chair votes ayes. All those opposed?

COUNCILMEMBER ANDERSON: No.

COUNCILMEMBER JOHNSON: No.

COUNCILMEMBER VICTORINO: Opposed.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. We have five ayes, Members Mateo, Molina, Baisa, Medeiros, and Pontanilla; three noes, Members Anderson, Johnson, Victorino; one excusal, Member Hokama. Is that clear, Staff?

UNIDENTIFIED FEMALE: Yes.

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

NOES: Councilmembers Anderson, Johnson, and Victorino.

EXC.: Councilmember Hokama.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the amendment.

CHAIR MOLINA: All right. Members, it is ten minutes until 9:00, I'd like to give you a couple minutes to check your calendars. I'll throw this proposal out before recess.

COUNCILMEMBER JOHNSON: Chair, we have to vote on the main motion.

CHAIR MOLINA: Oh, oh, excuse me. Sorry. Sorry. Sorry. Okay. Excuse me, jumping the gun. It's late. We are back to the main motion as amended. Discussion? I believe, Member Medeiros, you had a question?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, I, I just have a question. How the report is from, and I have, you know, a lot of respect for Dr. Altenberg even though I don't know him personally. I've seen his credentials and Member Anderson speaks highly of him and his work. But how did a report by Dr. Altenberg become a report that the applicant has to process, or, or provide? I don't understand that part.

CHAIR MOLINA: Okay. Member Anderson, can you clarify that question from Member Medeiros?

COUNCILMEMBER ANDERSON: Yeah, the condition was written because the applicant was supposed to provide a botanical report to U.S. Fish and Wildlife for their review, and the, the report that they submitted again was a report that was done in 1988 for their EIS. And it was wholly inadequate. And Dr. Altenberg has gone in and done a complete survey, well, he says it's

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

not complete, but if you look at his map it's way more complete than we got from the applicant. And so, I'm offering that as a report, a botanical report to be sent to DLNR, U.S. Fish and Wildlife, U.S. Corps of Engineers as required by our application requirements for their comment and review. And, you know, actually there should be since you guys just took out the, the ending sentence which would have allowed us to make conditions on the conservation value of the land. Now the condition doesn't mean a whole lot, because they're just going to review and comment prior to Phase II. I would amend this to state that, you know, there needs to be a preservation/mitigation plan based on this report. And that's called out for, as I said, in our Change in Zoning application that a preservation/mitigation plan, and comments on that plan from DLNR.

So actually, you know, his report is really just a report on the findings of the remnant Wiliwili forest habitat; all his GPS points and findings. So really if you want to make this condition mean anything I think there needs, now that the last sentence is out there needs to be something that states that a preservation/mitigation plan shall be developed based on comments and review prior to Phase II approval.

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: Yeah...

CHAIR MOLINA: Well, you can propose that, and I'll go back to you, Mr. Medeiros, and then we'll consider Member Anderson's.

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, mahalo, Mr. Chairman. Yeah, I, I think that answers my question why the report was done by a private individual, but having to be submitted by the applicant, and I think Member Anderson answered my question. Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Member Anderson, I'll go back to you. Would you like to propose that as an amendment to the motion as amended?

COUNCILMEMBER ANDERSON: Yeah. The United States Fish and Wildlife Service and the United States Corps of Engineer for review and comment, and development of a preservation/mitigation plan prior to Phase II approval.

CHAIR MOLINA: Okay. Is there a second?

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: All right. Staff, you want to go ahead and read that back the amendment?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

MS. NAKATA: Yes, Mr. Chair. The condition in its entirety would read “Honua’ula Partners, LLC, its successors and permitted assigns, shall provide the report ‘Remnant Wiliwili Forest Habitat at Wailea 670, Maui, Hawaii, by Lee Altenberg, Ph.D.,’ to the Department of Land and Natural Resources of the State, the United States Fish and Wildlife Service, and the United States Corps of Engineer for review and comment. Honua’ula Partners, LLC, its successors and permitted assigns, shall develop a preservation/mitigation plan based on comments by the reviewing agencies prior to Project District Phase II approval.”

CHAIR MOLINA: Okay. Members, the amendment has been stated. Is that clear on what we will be voting on?

COUNCILMEMBER ANDERSON: That wasn’t exactly what I said, Mr. Chairman.

CHAIR MOLINA: Okay. Proceed, Member Anderson.

COUNCILMEMBER ANDERSON: I think that the development of the preservation/mitigation plan has to be done prior so that the U.S. Fish and Wildlife and, and these reviewing agencies can review that. So I mean that’s what it calls out in the application requirements. And if we’re having them review Dr. Altenberg’s report, and then make comments on it, and then have the applicant develop a preservation plan, then that preservation plan is never going to be reviewed by these agencies, and they’re the experts that should say this preservation plan supports the findings in this report that we find, you know, valuable in, you know, saving a critical habitat or, or conservation lands. And I’ll just read the way it says in our Change in Zoning paraphrasing it down. I’m not going to say all the, but the important language is identification in the environmentally sensitive areas, habitat and botanical features, if applicable, a baseline study and preservation/mitigation plan and comments, if applicable, from the Department of Land and Natural Resources. So, basically, Dr. Altenberg’s report is substituting for the baseline study that we never got.

So, you know, I would say “shall provide their report to the Department of Land and Natural Resources and the other agencies along with a preservation/mitigation plan for review and comment prior to Phase II.” So that the applicant can work with Dr. Altenberg, come up with a preservation/mitigation plan that reflects the baseline study, see if they can get DLNR, U.S. Fish and Wildlife to support the preservation plan prior to Phase II approval, and then it would be up to the Planning Commission.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Staff, do you need some time to get the language straight?

MS. NAKATA: No, Mr. Chair. I apologize for the confusion. So the condition would read “That Honua’ula Partners, LLC, its successors and permitted assigns shall provide a, excuse me, shall provide the report, and then site to the title of the report, along with a preservation/mitigation plan to the Department of Land and Natural Resources of the State, the United States Fish and

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

Wildlife Service, and the United States Corps of Engineer for review and comment prior to Project District Phase II approval.”

CHAIR MOLINA: Okay. I see a nod from Member Anderson, so that is the --

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: --the amendment as stated. And we do have a motion on the floor --

COUNCILMEMBER ANDERSON: Chair?

CHAIR MOLINA: --to incorporate that. Member Anderson?

COUNCILMEMBER ANDERSON: Do we have to make an amendment or can we just do this as a friendly amendment to make this change?

CHAIR MOLINA: Staff, what is the more cleaner approach? What would you recommend?

MS. NAKATA: I think a friendly amendment is fine, Mr. Chair.

CHAIR MOLINA: Members, any objections to a friendly amendment to incorporate the language?

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: RH).

CHAIR MOLINA: Okay. Member Johnson?

COUNCILMEMBER JOHNSON: My question is if it's just review and comment, because in the other condition we noted that they were going to review and approve. Now do these entities underneath the statute, can they, you know, like review an adoption prior to Phase II approval, or do they just, do they not have that authority?

CHAIR MOLINA: Staff, are you able to comment on Member Johnson's question?

COUNCILMEMBER JOHNSON: Or Corporation Counsel.

CHAIR MOLINA: Mr., Mr. Hopper, would you like to jump in on that?

MR. HOPPER: Well, the, the County Code is not really clear on what sort of comments you get. It simply says and comments as applicable from the Department of Land and Natural Resources of the State, United States Fish and Wildlife Service, and the United States Corps of Engineers. I'm not actually sure if they would be in the business of approving of one of those mitigation plans,

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

or if they would just provide comment. So you could contact them directly to see if they, they would review things like that and maybe Planning has a more specific response.

COUNCILMEMBER JOHNSON: You know, and, and my only concern, Mr. Chair, is that if it's just review and comment, then how does the plan get adopted? And if it's to be adopted by the Planning Commission, then I just want to make certain that that is the intent of this particular amendment.

MR. HOPPER: And interestingly it doesn't appear. The Code says who adopts the plan. It says that there will be a plan but it does not specify who will adopt the plan. It says you'll have comments, but it does not say that a certain entity, Council, or one of those entities would adopt the plan. So it is open. It, it says identification of environmentally sensitive areas, habitat, and botanical features which include but are not limited to wetland streams, rock outcroppings, endangered plants and animals, and exceptional trees. If applicable, a baseline study and preservation/mitigation plan and comments, if applicable, from the Department of Land and Natural Resources of the State, United States Fish and Wildlife Service, and United States Corps of Engineers. It doesn't really say, at least in, in the Code who would be either adopting or accepting that plan.

COUNCILMEMBER JOHNSON: Okay. So in terms of, you know, if they're not an approving authority, Ms. Suyama, would that be the Planning Commission that would impose any condition that the plan actually be adopted or implemented?

CHAIR MOLINA: Director?

MS. SUYAMA: The only way that I can see that the Commission would, is part of its authority to approve the Phase II Project District, they could make it as a condition that the plan gets adopted.

COUNCILMEMBER JOHNSON: *...(change tape, Side 3B)...* or can we put in language that actually sees that that occurs? You know, for review and recommendation to the Planning Commission for adoption prior to Phase II approval?

MR. HOPPER: I think the theory behind the Code is that they give you the plan at the time that you review the application so that you can have appropriate conditions. You don't necessarily approve of or disapprove of the plan, but you would, you could condition the project appropriately, or use that plan to decide if you would approve or deny the project, you know, whether or not it meets your Change in Zoning criteria. You know, why the Code doesn't say who adopts it or even if it needs to be accepted in any sort of a sense to me would indicate that the theory is that this is provided to you for informational purposes to assist you in your decision making.

COUNCILMEMBER JOHNSON: Okay. But what you're saying then is that nobody's going to approve this plan ostensibly?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

MR. HOPPER: Well, when I read the Code it doesn't, just doesn't specify who does, and...

COUNCILMEMBER JOHNSON: Well, you know, and this is part of the problem, Mr. Chair. This is why, who is going to do this? And so, you know, I, I don't know if a friendly amendment would do it, but I certainly would feel much more comfortable if the last sentence "the U.S. Corps of Engineers for review and recommendation to the Planning Commission for adoption prior to Phase II approval." I would feel more comfortable with that, because then at least we're telling them that somebody is going to adopt this plan. Because if it's just a plan, and it doesn't do anything or go anywhere, and never gets implemented, what, what's the use? That's my concern.

CHAIR MOLINA: Okay. All right. Thank you, Member Johnson. Members, any comments to I guess the consideration to incorporate as a friendly amendment to designate the Planning Commission as the approving authority for this plan? Member Anderson?

COUNCILMEMBER ANDERSON: I mean I guess we could do that, but we're the ones that are supposed to be, nobody's really supposed to be approving the plan. Excuse me, I just ate some chocolate. Mr. Hopper's correct. We're supposed to have the plan as an informational document so that we can meet the criteria of approval which means, which says the applicant, if granted, application if granted would not adversely impact the social, cultural, economic, environmental and ecological character and quality of the surrounding area. So if we had that plan we could be putting conditions in. Ms. Suyama is also correct. The Planning Commission, they can put in conditions too at Phase II approval, but I don't know that we can, you know, force the adoption of a plan that we haven't seen that, that the applicant is free to word in any way he wants.

So, you know, again a pig and a poke and hopefully the Planning Commission, based on Dr. Altenberg's study, U.S. Fish and Wildlife, in their comments, could say, well, based on his study this baseline study shows that there is critical habitat here. This preservation/mitigation plan does not meet the needs in conserving these critical habitat lands. The Planning Commission could then hopefully say, okay, well, your plan's not good enough and put a condition. But I don't know that we can force the Planning condition, Planning Commission to adopt a plan that hasn't even been drawn up yet that we haven't seen, that U.S. Fish and Wildlife hasn't seen. All we have to go by is the baseline study in the hopes that something will come from that study that can help save some of this critical habitat.

CHAIR MOLINA: Thank you, Member Anderson. Committee Members, the Chair would like to request a recess. I think you've all been here for a while, and I think we all need one. We can consider the language that, during the break, Member Johnson is asking us to incorporate.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair, in, in light of what Member Anderson has said I, I would rephrase slightly then and would just put "the United States Corps of Engineers for review and submission to the Maui County Planning Commission for consideration of adoption prior to Phase II approval." That way you're not compelling them, but they can either consider it or make recommendations, but that way we're not directing them to do anything, but they could at

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

least receive the plan with the comments, you know, submitted to them by the Corps of Engineers, U.S. Fish and Wildlife, and DLNR. So that's one possibility.

CHAIR MOLINA: All right. Why don't we mull over that. Maybe you can work with Staff. In the meantime, Members, during the break please bring out your calendars. The Chair's going to throw out tomorrow night as a consideration, Members, so see what you can come up with, and I'll ask for your comments after we come back from break. This meeting is in recess till 9:20. . . .(gavel). . .

RECESS: 9:08 p.m.

RECONVENE: 9:22 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee Meeting of October 18th, 2007, is now back in session. It is 9:22 on the night of November 13th, Tuesday. Thank you for that break, Members. We were on Member Anderson's Critical Habitat Condition, and we are considering as a friendly amendment additional language to the condition, and I believe we last left with Member Johnson. You have the floor.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair, I worked with Staff, and my amendment would be where the last sentence, or this, it would be the first sentence, but towards the end it says "the U.S. Fish and Wildlife Service and the United States Corps of Engineers," and I would change "review and comment" to "review and recommendations prior to Phase II approval," and then I would add on to the end of the condition "that the Maui Planning Commission shall consider adoption of the plan prior to Project District Phase II approval." So because we struck the last part, you know, following that sentence I would put "Maui Planning Commission shall consider adoption of the plan prior to Project District Phase II approval." And then that way we're not mandating. So I, what I'm going to do at this point is I'm going to offer that as a friendly amendment to the original condition.

CHAIR MOLINA: All right. Okay. Staff, can you read the condition in it's entirety as altered or amended?

MS. NAKATA: "That Honua'ula Partners, LLC, its successors and permitted assigns shall provide the report 'Remnant Wiliwili Forest Habitat at Wailea 670, Maui, Hawaii by Lee Altenberg, Ph.D.,' along with the preservation/mitigation plan to the Department of Land and Natural Resources of the State, the United States Fish and Wildlife Service and the United States Corps of Engineer for review and recommendations prior to Project District Phase II approval. The Maui Planning Commission shall consider adoption of the plan prior to Project District Phase II approval."

CHAIR MOLINA: Okay. Members, you have it as a proposed friendly amendment from Member Johnson. Comments? Otherwise the Chair will accept that as a friendly amendment into the condition already as amended. Any comments, Members? Any objections?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCIL MEMBERS: No objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: RH).

CHAIR MOLINA: Okay. So be it. So the condition as amended will incorporate the friendly amendment. So with that being said the Chair will call for the vote unless there is other considerations on this condition? All those in favor on the condition as amended signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed? Okay. The Chair will mark it eight ayes with one excusal, Member Hokama.

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

NOES: None.

EXC.: Councilmember Hokama.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the amendment.

CHAIR MOLINA: Very good, Members. That takes care of our work for tonight. At this point, the Chair is throwing out a consideration for a recess of tomorrow night again at 5:30. Members, do you need some time or additional, would you like to provide comment on your availability for tomorrow night? We'll start Member Johnson followed by Member Anderson.

COUNCILMEMBER JOHNSON: Yes, Mr. Chair, that is in direct conflict with the Task Force that I am serving on which is the Honoapiilani Highway Task Force. The State Department of Transportation is having their first meeting. So I'm not going to be able to make tomorrow evening.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Staff has advised me--Staff, can you go ahead and comment on the...what we just did, and I believe there's one more thing we need to do? I guess maybe...Ms. Frias?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCILMEMBER JOHNSON: As amended, the condition.

CHAIR MOLINA: So I don't, I don't believe we're quite, quite done with the Critical Habitat Condition. The main motion as amended.

MS. FRIAS: Excuse me, Mr. Chair, the main motion is still pending on the floor.

CHAIR MOLINA: Yeah. I, I thought we had done that when we had --

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: --incorporated the friendly amendment in...

MS. FRIAS: No, that was the, a friendly amendment by Councilmember Johnson, which when the vote was taken, it also incorporated Councilmember Anderson's proposed amendment about the preservation/mitigation plan.

CHAIR MOLINA: Okay.

MS. FRIAS: And so the main motion is still pending on the floor.

CHAIR MOLINA: Okay. So we still have one more step to go through? Okay, thank you. Sorry, I thought we had gone through that. Okay. All right, Members, we are back to the main motion as amended again. So we do have to take another vote. Committee Secretary, are we doing it appropriately now?

MS. FRIAS: Yes.

CHAIR MOLINA: Members, are we all clear on what we're going to do now?

COUNCILMEMBER ANDERSON: The main motion.

CHAIR MOLINA: The main motion now --

COUNCILMEMBER JOHNSON: I need to...*(inaudible)*...

CHAIR MOLINA: --and it's been amended several times. Okay. Member Johnson?

COUNCILMEMBER JOHNSON: As part of discussion. Even though I made the amendment I still think that the County Council needs to be able to put a condition in once the plan is actually reviewed. There's no assurance that that is going to happen. So even though it may not make sense to some individuals I still believe in principal that the final sentence should not have been removed, because I believe we are the appropriate body to impose conditions to zoning. Thank you.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. Thank you, Member Johnson. Any additional comments before we take the vote? All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: Okay. We have seven ayes; one no, Member Johnson; and one excusal, Member Hokama.

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

NOES: Councilmember Johnson.

EXC.: Councilmember Hokama.

ABSENT: None.

ABSTAIN: None.

MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: All right. I believe we are all set at this point. All right. Thank you very much, Committee Secretary. Member Anderson, we're back to the discussion on the Members availability for tomorrow night?

COUNCILMEMBER ANDERSON: Yeah, would you be willing to consider, what's tomorrow, it's Wednesday night? Could you, would you be willing to consider Thursday night?

CHAIR MOLINA: The Chair's open.

COUNCILMEMBER ANDERSON: I mean could we, like, put both of them out there and see how many can make which night?

CHAIR MOLINA: Okay. The Chair's...

COUNCILMEMBER ANDERSON: Because Tuesday night's bad for me.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: I mean Wednesday night --

CHAIR MOLINA: Wednesday.

COUNCILMEMBER ANDERSON: --is bad for me.

CHAIR MOLINA: All right. Members, well I'll start first. The Chair is available for either night. Okay. We'll start with Mr. Victorino, your availability, your choice, Wednesday or Thursday night?

COUNCILMEMBER VICTORINO: Well...

CHAIR MOLINA: Of course it doesn't prohibit us from even considering both, I mean if that's the choice of this Committee. I mean, but anyway we're, we're looking at either or, Wednesday or Thursday, Mr. Victorino.

COUNCILMEMBER VICTORINO: Well, Thursday would be better. From 6:00 on I would be available.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. So that's Thursday. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thursday after 7:00.

CHAIR MOLINA: Okay, and we do have a Budget and Finance meeting Thursday afternoon as well, yeah, from 1:30. Okay. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: So you still have your 1:30 Land Use meeting?

CHAIR MOLINA: Tomorrow, yeah --

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: --and then Budget meets at 1:30 on Thursday.

COUNCILMEMBER MEDEIROS: Thursday. Right. I'll be available on Wednesday.

CHAIR MOLINA: Okay. So your choice is Wednesday?

COUNCILMEMBER MEDEIROS: Uh-huh.

CHAIR MOLINA: Okay.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCILMEMBER JOHNSON: Thursday.

CHAIR MOLINA: Member Johnson is Thursday. Member Baisa?

COUNCILMEMBER BAISA: I prefer Wednesday, but if I am needed I'll try to be here Thursday.

CHAIR MOLINA: Okay. Thank you, Member Baisa. And we already heard from Member Anderson. Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, my preference would be on Wednesday. Thursday I am not available. We have another item on Molokai that I, I need to be present at. However, Saturday on Molokai would be terrific.

COUNCILMEMBER VICTORINO: Hey, I like that. I move to, oh, sorry.

CHAIR MOLINA: I don't know if I want to go that far, but that's pretty creative thinking, Mr. Mateo. The Chair appreciates that.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Yes, Mr. Victorino.

COUNCILMEMBER VICTORINO: I know we've considered Wednesday and Thursday, and it seems like every Wednesday or Thursday somebody's not going to be here. So with that in mind what about Friday?

COUNCILMEMBER BAISA: No.

COUNCILMEMBER VICTORINO: Okay. Because I mean every day you're going to have somebody not here, so let's see what Friday does?

CHAIR MOLINA: Well, what is the, I'll tell you what, we'll consider first Wednesday and Thursday, and if need be we'll go ahead and poll Members for Friday as well after, we do have a Council meeting at 9:00. Hopefully it doesn't extend into the evening, but I guess if that's a consideration. Member Anderson, you have comments on Friday?

COUNCILMEMBER ANDERSON: Yeah, I was just going to say that that's probably a good idea because we could convene in the afternoon after Council. We're all going to be here for Council, and, and it doesn't interrupt people's, you know --

CHAIR MOLINA: Prior commitments.

COUNCILMEMBER ANDERSON: --prior commitments in the evening.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: Okay. Member Baisa?

COUNCILMEMBER BAISA: I would be much happier with meeting right after the Council meeting on Friday. That would be great, because what I am going to try to attend, of course, is GPAC. I've been really having a hard time getting there will all these night meetings we're having.

CHAIR MOLINA: Thank you, Member Baisa. Members, any other comments for Friday? Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, I would be available after the Council meeting; however, I do catch the last --

CHAIR MOLINA: Right.

COUNCILMEMBER MATEO: --and the only flight to Molokai at 5:30. So I would be able to be here, you know, up until 4:30.

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

COUNCILMEMBER MEDEIROS: I'd be available, sorry. Sorry, Mr. Chair. I'd be available after the Council meeting. I do have an evening commitment already.

CHAIR MOLINA: Okay. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Friday up to 4:30.

CHAIR MOLINA: Okay, and Mr. Victorino you already made to us known on your availability for that. And again the Chair, the Committee Chair has no choice. I don't even have a say. So...

MS. NAKATA: Mr. Chair?

CHAIR MOLINA: Staff?

MS. NAKATA: Staff would just note that if we're considering Friday after the Council meeting we do need the Council Chair's approval for that.

CHAIR MOLINA: Okay, and the Council Chair is not here to give his comments, so we will ask Staff to consult with the Council Chair for his comments of the use of the Chambers for that particular day. So, Members, we're sort of hanging in the air here as far meeting because of the unknown availability of the Chambers on Friday. So I would at least throw out one day before we consider Friday. I mean if, because if the Chair tells us that we cannot meet on Friday, then we may be in a bit of a quandary. So I would initially suggest either Wednesday or Thursday, and then until we get a response from the Council Chair, and it's unfortunate he's here *[sic]*. So what is the will of, pleasure of the majority. Mr. Victorino?

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

COUNCILMEMBER VICTORINO: If, if the Council Chair says yes, then we, we would do it on Friday then, because I thought Friday just about everybody said yes.

CHAIR MOLINA: Yeah.

COUNCILMEMBER VICTORINO: Okay. If he says no, then you're looking for an other day?

CHAIR MOLINA: Yeah, well, well, today is the 13th. Okay. We have, what, five days.

COUNCILMEMBER VICTORINO: Right.

CHAIR MOLINA: So the 18th falls on a Sunday unless Members are willing to come in on Saturday or Sunday, if that's the case. Members Anderson?

COUNCILMEMBER ANDERSON: You know, I had a meeting after last Friday's Council meeting and there was no problem with that.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: So I don't think there'll be a problem. I, I know that they need to consult with the Chair, but I can't imagine him saying no.

CHAIR MOLINA: Stranger things have happened but, Staff, now, well, well let me just ask with regard to Council...

COUNCILMEMBER ANDERSON: Especially if you tell him we're getting to a final vote.

CHAIR MOLINA: With Council rules can a body overrule the Chair's recommendation for the use of the Chambers? I mean I have to ask. I mean am I, am I committing taboo by even asking that question, Staff? Well, maybe Mr. Mateo, do you want to give comment on that? I mean if it's a, if it's a, if the Chair recommends or suggests we cannot use the Chambers can the body make that decision? I mean can it overrule, I believe we could in essence overrule the Chair's, . . . Staff, do you care to comment? I'm hoping we don't have to go...

MS. NAKATA: If the Chair would like to take a short recess while Staff sees if she can get in touch with the Chair?

CHAIR MOLINA: Okay. Meeting, short recess. Members, don't go anywhere. Recess subject to the call of the Chair. . . .(gavel). . .

RECESS: 9:34 p.m.

RECONVENE: 9:37 p.m.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18, 2007, is now back in session. Thank you, Members, for that break for Staff and the Chair to consult with the Council Chair. According to Staff via phone call to Mr. Hokama he stated that he does not have a problem with recessing until Friday, using the Chambers for Friday as a potential recess date. The Chair would, well, let me ask the body would there be a preference for an early evening meeting or just go from 1:30?

COUNCILMEMBER VICTORINO: 1:30.

COUNCILMEMBER BAISA: 1:30.

CHAIR MOLINA: All right. So be it, Members. So no consideration for Thursday or Friday. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Knowing that some of our Council meeting goes up until, like, two o'clock...

CHAIR MOLINA: If, if that is the case, if the meeting does approach 1:30 what we can do, we, we can get quorum to convene and recess, and then we'll finish the Council meeting, and then start whenever, you know, time permits. So that is how we will address that matter if we do approach 1:30, and the Council meeting is still in progress. So we'll open up, and then recess, go back to the Council meeting, finish that up, and then go back to whatever time the body feels appropriate to address...

VICE-CHAIR PONTANILLA: Okay. Then we'll consider lunch too after the meeting; right?

CHAIR MOLINA: You might have to bring home lunch or eat in the Chambers at the rate we're going, but --

VICE-CHAIR PONTANILLA: Thank you.

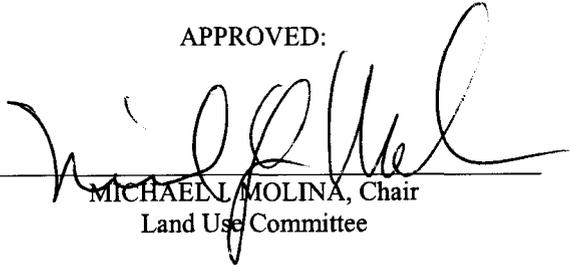
CHAIR MOLINA: --we'll have a working lunch. Okay. So, Members, we will, we will establish Friday 1:30 as a recess day. No considerations for Wednesday or Thursday? The Chair wants to get an opinion from the body. So no Wednesday or Thursday then; right? All right. Okay. So we shall set it in stone at this point. This meeting is in recess until Friday, November 16th, 1:30, right here in the Council Chambers. This meeting is in recess. . . .(*gavel*). . .

RECESS: 9:40 p.m.

LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

APPROVED:



A handwritten signature in black ink, appearing to read 'Michael L. Molina', is written over a horizontal line. The signature is fluid and cursive.

MICHAEL L. MOLINA, Chair
Land Use Committee

lu:min:071113r

Transcribed by: Jessica Cahill

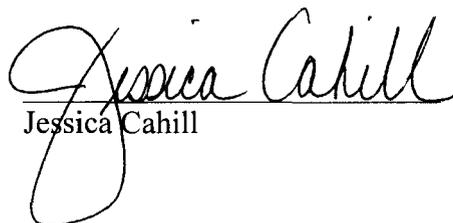
LAND USE COMMITTEE MINUTES
Council of the County of Maui

November 13, 2007

CERTIFICATE

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

DATED this 10th day of December, 2007, in Wailuku, Hawaii


Jessica Cahill