

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

**MINUTES**

**November 19, 2007**

**Council Chamber**

**RECONVENE:** 9:15 a.m.

**PRESENT:** Councilmember Michael J. Molina, Chair  
Councilmember Joseph Pontanilla, Vice-Chair  
Councilmember Gladys C. Baisa, Member (Arrive 10:44 a.m.)  
Councilmember Jo Anne Johnson, Member  
Councilmember Bill Kauakea Medeiros, Member (Leave 2:08 p.m.)  
Councilmember Michael P. Victorino, Member

**EXCUSED:** Councilmember Michelle Anderson, Member  
Councilmember G. Riki Hokama, Member  
Councilmember Danny A. Mateo, Member

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

**ADMIN.:** Ann Cua, Planner, Department of Planning (Leave 10:12 a.m.)  
Colleen Suyama, Deputy Director, Department of Planning (Arrive 10:12 a.m.)  
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)  
B. Martin Luna, Esq., Carlsmith Ball, LLC (Applicant's attorney)  
Joyclynn Costa  
Kimokeo Kapahulehua  
Ken Jencks  
Dick Mayer  
Additional attendees (10)

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

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**CHAIR MOLINA:** . . .(*gavel*). . . The Land Use Committee meeting of October 18, [*sic*] 2007 is now in session. Members, we've got a bare quorum this morning. So, it's been a very, very long, long I guess process. And being that this is an off week I know the challenges of making yourself available to be here for this matter, and I thank those of you who are here this morning so we can

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continue the work on this particular item. I believe we're very close to making a decision this morning.

Members who are here - Members Johnson, Medeiros, Pontanilla, Victorino, and Molina. Excused Members Mateo, Anderson, Baisa, and Hokama. And from the Committee Staff we have Committee Analyst Carla Nakata, Committee Secretary Tammy Frias. From the Planning Department, filling in for Deputy Director Colleen Suyama is Senior Planner Ann Cua, and we have from the Corporation Counsel's office Mr. Mike Hopper.

**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: I'd like to start off this morning first with Member Medeiros has a consideration. And I know Member Johnson had two other considerations as well. I believe Member Medeiros' proposal may not take as much discussion. I know, Member Johnson, you have two considerations. So, Member Johnson, if you don't mind if you'd like to yield to Member Medeiros.

COUNCILMEMBER JOHNSON: Fine.

COUNCILMEMBER VICTORINO: And, Mr. Chair.

CHAIR MOLINA: Yes, Mr. Victorino.

COUNCILMEMBER VICTORINO: I remind you I have one still waiting too.

CHAIR MOLINA: Yes, I was about to get to that, Mr. Victorino. We're not going to forget you.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Oh, I don't want that. Thank you.

CHAIR MOLINA: All right. No, no, we don't want to forget anybody especially you, Mr. Victorino.

COUNCILMEMBER VICTORINO: Thank you very much.

CHAIR MOLINA: All right. Mr. Medeiros, you have the floor.

COUNCILMEMBER MEDEIROS: Mr. Chair, if, if it's, you know, to your liking I, I can yield to Member Victorino.

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COUNCILMEMBER VICTORINO: No, no. No, no.

COUNCILMEMBER MEDEIROS: He can give his, uh . . .

CHAIR MOLINA: That's okay.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: I think Member Victorino's matter might take some additional --

COUNCILMEMBER VICTORINO: That's correct.

CHAIR MOLINA: --discussion as well. So, I think looking at yours, Mr. Medeiros, I don't believe it may take as much discussion. So, I'd like to start off first with the, uh, less contentious matters --

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: --and then we can deal with other ones at a later point. So, you have the floor, Mr. Medeiros, or do you need a little bit more time to . . .

COUNCILMEMBER MEDEIROS: Well, can we ask the, I know the, my condition was distributed in the previous meeting.

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER MEDEIROS: I just wanted to know if Staff has it in the binders. It is? Okay. So, the Members can look for it in the binder.

CHAIR MOLINA: Members, on your matrix it's on Page 11, Mr. Medeiros, of the November 10<sup>th</sup> matrix.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: That's the condition we're looking at.

MS. NAKATA: It was distributed on November 13<sup>th</sup>.

COUNCILMEMBER MEDEIROS: And we're using November 10<sup>th</sup> matrix?

CHAIR MOLINA: Uh-huh.

COUNCILMEMBER MEDEIROS: And I got to find that.

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CHAIR MOLINA: And this is in the consensus or vote box, Members. The, the last box on Page 11. Mr. Medeiros is asking us to consider an additional language to that condition.

COUNCILMEMBER MEDEIROS: Thank, thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Go ahead, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yes. I'm not sure in, uh, what fashion you want me to propose this. It's actually just inserting some verbiage in the already existing condition or in the, that far right column.

CHAIR MOLINA: Okay. Staff, Staff, for the record why don't you just go ahead and read the condition as currently worded and then we'll have Mr. Medeiros insert his additional language that he wants us to consider.

MS. NAKATA: Yes, Mr. Chair. "That Honua`ula Partners, LLC, its successors and permitted assigns, shall construct and maintain a private wastewater treatment facility and system that accommodate the needs of the entire project district."

CHAIR MOLINA: Okay. Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yes. And mahalo, Mr. Chairman. What I wanted to insert would have been after the, the word "maintain" and the verbiage that I wanted to insert was "and/or participate in the operation of" and that would be the only insertion I was proposing.

CHAIR MOLINA: Okay. Members, are, are we clear on where Mr. Medeiros wants to insert the additional language after the word "maintain" . . .

COUNCILMEMBER MEDEIROS: Which is in the second sentence of the existing condition in, in that far right column.

CHAIR MOLINA: Okay. And it would read as follows "and/or participate in the operation of" and then it continues "a private wastewater treatment facility and system that accommodate the needs of the entire project district." Am I correct, Mr. Medeiros?

COUNCILMEMBER MEDEIROS: That's correct, Mr. Chairman. I think the, yeah, the entire condition would, would say, "That Honua`ula, Honua`ula Partners, LLC, its successors and permitted assigns, shall construct, maintain, and/or participate in the operation of a private wastewater treatment facility and system that accommodate the needs of the entire project district."

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Members, comments on the proposal from Mr. Medeiros? Member Johnson?

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COUNCILMEMBER JOHNSON: I just wanted to know the justification for the addition of the word, wording.

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: Okay. Mr. Medeiros, are you able to respond?

COUNCILMEMBER MEDEIROS: Yes. I, I think I, I just wanted to have the option available in that language so, so that if the project had another means to participate in a private water system. They already have proposed that they will have their own wastewater system but I think if there's an existing private water, I'm sorry, private wastewater system that this little verbiage would, you know, allow for that.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. Member Johnson?

COUNCILMEMBER JOHNSON: I don't have a problem with that then because I think that that would allow some flexibility so if there is an existing one already in the area if they can connect to that at least it will not be burdening the public system. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: And, and just to add, thank you, Mr. Chairman, you know there was concerns that if they did have their own private wastewater system that there was concern by Member Anderson about additional wastewater residue and the injection wells and so forth. So, if they can connect to an existing private wastewater system that would alleviate some of those concerns. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Members, any other comments before the Chair makes a recommendation? Mr. Victorino?

COUNCILMEMBER VICTORINO: Yes, Mr. Chair. And I'll, and I'll, and I'll support this, this amendment to the proposal because I think also the other part that becomes very apparent is if they can hook up to an existing system which would probably be the Makena system their wastewater is being used for the golf course and so that water would not be injected but being used for what we intended it to be R-1 water being used for agriculture or irrigation purposes. So, I think it's a win-win situation for everybody. And when the, or if the capacity situation arises and they have to then develop their own system then it would be good because at that point they would have had some of their development and possibly their golf course being primed in so they can use both the R-1 water for construction and as well as their irrigation needs. So, it's a win-win situation all around. So, thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Mr. Pontanilla, any comments before I turn the mike back over to Member Johnson?

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VICE-CHAIR PONTANILLA: Thank you. I, I think the Members asked the proper questions in regards to, you know, we do have a private system right now in the Makena area and if that can be utilized to at least utilize the wastewater that's coming from this particular district for irrigation then it makes good sense. It makes good sense until, you know, they fully develop their own project district and at that time, you know, would create their own wastewater treatment plant. Because as we heard the irrigation for the golf course would come from, part from the private wastewater system that the developer is proposing in the future as well as brackish water that's going to be utilized for irrigation in this project. So, it make good sense. Thank you.

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

COUNCILMEMBER JOHNSON: This does not impact Condition No. 16 where they still have to at least provide the sewage disposal analysis. Am I correct in that?

CHAIR MOLINA: I believe . . . Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Well, yeah, my, my proposal for the additional verbiage was not in conjunction with any other condition.

COUNCILMEMBER JOHNSON: Okay. Yeah. And, and, Mr. Chair, I, I feel more comfortable knowing that having a separate provision for the sewage disposal analysis as they make their plans if they do have to connect to another system and what the impact would be in terms of injection or capacity that will have to be presented anyway as a result of this condition. So, I don't feel uncomfortable putting in a little bit more flexibility but also knowing that we have this additional requirement so that at least whatever system is adopted or hooked up to will have that analysis and we would at least be able to know whether it's going to impact other conditions that exist in the area. So, I will support this.

CHAIR MOLINA: Okay. Thank you, Member Johnson. With that being said, Members, the Chair is going to make a recommendation to support the amendment to the condition from Mr. Medeiros. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed.

MS. NAKATA: Excuse me, Mr. Chair.

CHAIR MOLINA: Yes, Staff?

MS. NAKATA: Would the Chair like to entertain a motion?

UNIDENTIFIED SPEAKER: Yeah.

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CHAIR MOLINA: Oh, excuse me. Okay.

COUNCILMEMBER JOHNSON: Oh, I thought we had one . . .

CHAIR MOLINA: All right. The Chair will entertain a motion. Mr. Medeiros, I'll give you the floor.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah. I, I make the motion that we insert the new language into the existing language that has been identified and if necessary, Mr. Chairman, do you want the Staff to read the entire verbiage?

CHAIR MOLINA: Yeah. Yes. Go ahead. We would need to, before we get that into play, we need a second.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. It's been motioned by Mr. Medeiros and seconded by Mr. Victorino to amend the condition, which relates to the private wastewater treatment facility. Staff, could you go ahead and read the condition as amended by Mr. Medeiros or proposed by Mr. Medeiros.

MS. NAKATA: "That Honua`ula Partners, LLC, its successors and permitted assigns, shall construct, maintain, and/or participate in the operation of a private wastewater treatment facility and system that accommodate the needs of the entire project district."

CHAIR MOLINA: Okay. Thank you, Staff. Mr. Medeiros, any further discussion before the Chair calls for the vote?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. No further discussion.

CHAIR MOLINA: Okay. Thank you. Seeing no other discussion. The Chair calls for the vote. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed. The Chair will mark it five-zero with four excusals - Members Mateo, Anderson, Baisa, and Hokama. Thank you, Mr. Medeiros.

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

**NOES:**      **None.**

**EXC.:**      **Councilmembers Anderson, Baisa, Hokama, and Mateo.**

**ABSENT:**      **None.**

**ABSTAIN:**      **None.**

**MOTION CARRIED**

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

CHAIR MOLINA: Okay. Let's go on now to Member Johnson's proposals.

COUNCILMEMBER JOHNSON: Mr. Chair, if you want to do Mr. Victorino's --

CHAIR MOLINA: Oh, okay. You need a little more time?

COUNCILMEMBER JOHNSON: --that would be fine.

CHAIR MOLINA: Sure. Okay.

COUNCILMEMBER JOHNSON: No. That would be fine.

CHAIR MOLINA: Okay. Mr. Victorino, you have the floor with your proposal dated on a November 13<sup>th</sup> memo that was submitted to the Committee. And . . .

COUNCILMEMBER VICTORINO: Yes. Thank you, Mr. Chair. And --

CHAIR MOLINA: Go ahead, Mr. Victorino.

COUNCILMEMBER VICTORINO: --I'm proposing the following amendment to the private water agreement to Honua`ula Wailea 670 project as follows, "That the Honua`ula Partners, LLC, its successors and permitted assigns, shall at their own cost and expense develop, maintain, and operate or cause to develop, maintain or operate a private water system storage facility, transmission lines for six..., Wailea 670 project in accordance with the Department of Water Supply standards. Honua`ula Partners, LLC, its, its successors and permitted assigns, shall comply to all reporting requirements of the State Commission and the Water Resource Management. In alternative, in the alternative Honua`ula Partners, LLC, and its successors and permitted assigns, may comply with the applicable water ordinances pertaining to water, the

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supply of water from the sources of the County of Maui when such ordinances are enacted." Thank you for your consideration.

And basically, what this amendment does it puts this project on notice that our new Water Development Plan, I should say our "show me the water bill" that has been brought forth and had passed on first reading on Friday that this project along with any other project that will come forth from that point will be adhered to and they must follow the strict standards as we have put forth in that new water bill. I think it is only good that in my mind that we follow what we put forth that we have concurrency. Again, that was the whole idea behind the "show me the water bill" that all developers from this point forward will have to comply.

And again ambiguous or having two standards or having too much verbiage like it, it presently has on top of that may be very confusing and may be subject to conjecture. So, I would like it so that this like every other project that will come before us will follow the standards that we've set in the "show me the water bill". I think Member Anderson and, and all of us have worked real hard to put that forward and I believe that all the Members have to agree it is a very extensive, I think one bill that will now bring forth the ability for us the County to know, and these developers, that they have to have water before they can start developing. No water no development. Very simple. Thank you, Mr. Chair.

CHAIR MOLINA: All right. Thank you, Mr. Victorino. Before we proceed, the Chair would just like some direction from Staff and maybe even Corp. Counsel. I know references are being made to Member Anderson's bill, which passed first reading on the Council. Do we, I'm just concerned maybe Sunshine Law issues because for this particular matter that item has not been amended. So, okay, I, I presume we can talk about it in a broad sense without getting into detail. I just want to make sure we don't get into any Sunshine Law concerns. Maybe, Mr. Hopper, can you give us an opinion?

MR. HOPPER: I wouldn't see any problem with that, Mr. Chair, as long as you're, I mean we've, we've done references to other bills in situations like this. For example, I think school impact fees or traffic impact fees. So, this would be the same context that we've discussed those. And I don't see a problem with that necessarily. Plus this, this Change in Zoning does have a pretty broad scope because you're dealing with a lot of different aspects of the project. So at least as far as the discussion that I've seen so far I don't see any Sunshine Law issues that have come up.

CHAIR MOLINA: Okay. Thank you. And, and I bring that up because the bill just passed first reading so it hasn't been finalized yet. It hasn't reached its final vote. So, okay, very good. Thank you, Mr. Victorino. So, just so the Chair has a clear understanding, Members, look on Page 1 of your November 10<sup>th</sup> matrix. This is the condition Mr. Victorino is asking us to consider amending or basically deleting that I guess that humungous paragraph which is attached, the second paragraph I believe. And you're going to insert the language, "In the alternative Honua`ula Partners", Mr. Victorino --

COUNCILMEMBER VICTORINO: Yeah.

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CHAIR MOLINA: --and you're going to substitute, take out that large paragraph and . . .

COUNCILMEMBER VICTORINO: That is correct.

CHAIR MOLINA: Okay. So, Members, do you all have a clear understanding of what Mr. Victorino's proposal is?

COUNCILMEMBER MEDEIROS: Uh.

CHAIR MOLINA: Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yes. Thank, mahalo, Mr. Chairman. What, what column? Is this the --

CHAIR MOLINA: This is the very last column.

COUNCILMEMBER MEDEIROS: --far, far right column?

CHAIR MOLINA: Yeah. If you look at, under the column that has the heading consensus or vote.

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: Mr. Victorino wants that second large paragraph removed and inserted in its place is the paragraph "In the alternative Honua`ula Partners" et cetera, et cetera that's on his memo.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: You want that read again for the record at least that paragraph which will supercede this large paragraph? Okay. "In the alternative Honua`ula Partners, LLC, its successors and permitted assigns, may comply with applicable water ordinances that pertain to the supply of water from sources of the County of Maui when such ordinances are enacted." So this paragraph will supercede this large paragraph that's in the column under consensus or vote. So, are you clear?

COUNCILMEMBER MEDEIROS: Yeah. Mahalo, Mr. Chairman, I follow you.

CHAIR MOLINA: Okay.

COUNCILMEMBER MEDEIROS: Thank you.

CHAIR MOLINA: All right. Member Johnson?

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COUNCILMEMBER JOHNSON: Yes. And I'm, because I know Member Anderson is not here, if, if Mr. Victorino could comment as to whether or not he has had any dialogue with Member Anderson regarding the removal of this condition in regard to I guess the "show me the water bill" that we just recently passed.

CHAIR MOLINA: Okay. Mr. Victorino, are you able to respond to Member Johnson's question?

COUNCILMEMBER VICTORINO: The only conversation in passing she had not really looked at this and so, you know, she, she felt that just in passing what she had seen, she felt, you know, she still felt a little uncomfortable with some of the stuff here but realizes that, you know, and we felt that the water bill that we're bringing forth again on, on first reading really covers pretty much all the same things that we're talking about here. I mean, I believe that we're covering the same issues in our water bill as you seen right here. So, unless somebody can tell me otherwise I don't see a major problem in switching but that's up to you folks. You know what I mean?

I think it simplifies it. It has concurrency. And, and I, I, I don't want, sometimes if we have too many rules and regs or too many conditions and then you have laws that change or may supercede a condition then what happens? You know because again the law says this now but the condition said that. And I think our "show me the water bill" is very extensive. I think every one of us have had the time to look it over and most of us voted for it in the first reading. I feel very comfortable with this. And, you know, again to me it simplifies it, puts it in concurrency to what laws and ordinances that we enacting right now.

CHAIR MOLINA: I think so.

COUNCILMEMBER VICTORINO: So that's my, my take on that.

CHAIR MOLINA: Okay. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. And, and because I know that originally Member Anderson I believe this was the same condition that we had spoken about and, you know, the detail that is contained within this was very specific to this particular site. The bill that we just passed forward on first reading it's going to require one additional reading and it applies to subdivision. This however applies to this specific project district and the Phase II application. Because the Council does not have the ability to interact on the Phase II application we're not involved in that and because we don't have a . . . at, at this point in the application coming forward now, we don't have any guarantee that that water is going to be, and all the conditions with regard to the whole entire system, it's not before us now. I really don't feel comfortable passing on this.

The only thing, Mr. Chair, that we did get in communication just with regard to I guess water transmission, one of the things that we received from Dick Mayer was that he wanted to make certain that the use of any water developed within or imported to the Upcountry region for consumption within the Upcountry region with the exception provided for ag use, he wanted to make certain he says that you condition Wailea 670 in such a way to make certain that they do

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not violate the Makawao-Pukalani-Kula Community Plan by transmitting water *mauka* of Maui Meadows. So, you know, to me I don't know if this should be incorporated but because Member Anderson is not here and I just don't feel comfortable because she has the intimate knowledge of what is contained in this as well as what should be incorporated in this particular bill. If this is one of the items that we could return to, Mr. Chair, I hate to be the, you know, the problem child if you will. But when I don't feel comfortable on something I just prefer not to make an error in my judgment. So, I would just ask if the motion can be revisited later or tabled for the time being until Member Anderson can at least give our feedback. That, that would be my request.

CHAIR MOLINA: Okay. Well, we'll, the Committee will consider it. One option is we could, if the Members do want to move on it rather than by, you know, formal motion it could be done by just consensus if that's something the Committee would consider. Member Johnson, you brought up a good question related I guess we saw the e-mail from Mr. Mayer and if you like or any of the Members want we have the applicant here that could respond to that consideration. But before we do that let me go to Member Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. Question for Corporation Counsel. Once we go through the second and final reading for the proposed bill in regards to availability of water, will this development be subject to that particular bill?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: Since I'm primarily involved in land use items I haven't been attending those water meetings. The answer would be however the bill says it would apply. I'm not sure at what stage it would apply. But I mean you could make this, this project I believe subject to it by a condition if, if you decided that was the way to go. But at this point I need to see, you know, it, it depends on which stage. If it's at subdivision approval for example I believe this would be subject to it because it hasn't gotten its subdivision approval yet but I'm not sure what the bill currently states. And, you know, obviously, since it hasn't been passed that could even be subject to change for all we know. But I think that if, if you're okay with the, with doing that as a condition and the developer's okay with complying with it once it's adopted then that's one way of making sure that they would subject to it. Currently, I'm just not sure.

VICE-CHAIR PONTANILLA: Okay. Chairman, if, if Corporation Counsel can review that prior to making this decision because some of the items that is noted presently on this matrix also included in the proposed ordinance in regards to that water bill. The second item in regards to Member Johnson's, in regards to this e-mail here, to my knowledge I, I think the developer is very aware in regards to, you know, where you can take water from. Because during the Planning Commission meeting I understand at one point they were going to take some water from the Hana community planned area and that was a no-no. So, there is a boundary line, you know, between Ulupalakua and Makena, you know, where you can get water from, yeah. Below the line it's Central Maui. Above the line it's either Kula . . . Makawao, Pukalani, Paia, Kula. And then at the, at a certain area it, it includes the Hana community planned area.

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CHAIR MOLINA: Mr. Pontanilla, if you like the applicant is here to try and clarify your concern as well as Member Johnson and the, as it relates to the e-mail from Mr. Mayer. We can call the applicant up to give us . . . I know it's been awhile since we addressed the water condition. With so many other issues I think we're, our minds are quite saturated with other information. So, we maybe have information overload at this point. Mr. Jencks. Any objections to have Mr. Jencks clarify the --

COUNCILMEMBER VICTORINO: No objections.

CHAIR MOLINA: --where the water is coming from or at least what community planned district it will be coming from? Okay. Seeing no objections. Mr. Jencks, you have the microphone.

MR. JENCKS: Good morning, Mr. Chair, and Members of the Committee. Indeed the water for this project is being generated. Two wells have been dug and those wells are clearly within the Kihei-Makena Community Plan District.

CHAIR MOLINA: Okay. Mr. Pontanilla, or Members, any other questions for the applicant --

COUNCILMEMBER VICTORINO: Mr. Chair.

CHAIR MOLINA: --as it relates to that matter? Mr. Victorino.

COUNCILMEMBER VICTORINO: Yeah. Mr. Chair. Yes. Mr. Jencks, thank you. Is there, and I guess the question comes up, is there any plans to go further north or further up the mountain as far as this? Because again it clearly has a distinguishable line where you can draw water from and, and even in, in our bills coming out we are very distinctive about where you can take water from. You must stay within your district and I think that's very important to understand. So, do you have any plans to go further up the mountain or are you going to where you're at now? I mean that's it you have no more water from those wells that's all you're going to get.

MR. JENCKS: The, the source development area that we have defined with Haleakala Ranch is 1,000 feet wide mauka-makai and travels from approximately the northern border of Maui Meadows towards the Research and Technology Park. And the entire resource development area is within the Kihei-Makena Community Plan District.

COUNCILMEMBER VICTORINO: And do you think that those two wells are far enough apart that they won't be drawing too much from a particular area? Because again that becomes always a concern. I mean even our own Department now has undertaken "spreading out" they call it of our well heads because too much is being drawn in a certain area creates salinity a lot quicker. So, do you feel that's fair enough, far enough apart?

MR. JENCKS: Yes.

COUNCILMEMBER VICTORINO: Okay. Thank you, Mr. Chair.

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CHAIR MOLINA: Thank you, Mr. Victorino. Any, Member Johnson?

COUNCILMEMBER JOHNSON: Yes. Mr. Jencks, because Mr. Mayer, and I just spoke to him, he's concerned about the transmission. It's not so much the source. And I don't know if you have a copy of his communication to us but basically . . . I'll just read it: Several months ago, I testified to your Land Use Committee on the potential impact of Wailea 670's plans to transmit water. I'd heard they had planned to import South Maui/Kihei-Makena water into the Upcountry/Makawao-Pukalani-Kula District and then transmit the water back into the South Maui District. I said that action would violate the law since Makawao-Pukalani-Kula Community Plan forbids because of ongoing drought concerns, the re-export of water brought into the Upcountry District, District except for agricultural use. So, can you address that specific concern?

MR. JENCKS: Sure. We do not intend to violate any community plan policy with the transmission of water. If I have to transfer that water up Piilani Highway that's what I will do. I frankly don't agree with Mr. Mayer's take on this policy for a number of reasons. Number one, the County of Maui is presently in violation of its own policy because there's a water tank above Maui Meadows that serves South Maui. Water is pumped from the Central Maui system into the Upcountry area to a water tank and then back down to South Maui. That is not the only location that is happening. It's also happening I believe with the wastewater system when they transfer reclaimed water into the Upcountry area back down to the . . . so, you know, there's already some direct violations of this, how one would read into this policy. But in a word, Members, I do not intend to violate any policies with regard to this plan.

COUNCILMEMBER JOHNSON: And, and would you object to a general condition then that would just say that with regard to the Wailea 670 Project any community plan applicability whether it's the South Maui, you know, the Kihei-Makena Community Plan or other community plans that your project would be willing to abide by whatever those requirements would be? I'm, I'm not, I'm talking about anything that might overlap not specific conditions outside of your project area.

MR. JENCKS: In, in a number of words, I would say I would object to that. This has come up a number of times. I remember the, the most recent example of this was the condition that was put on the project to not allow any TVR's on the project when it already is a matter of law that it's not allowed for. I'm not quite sure what purpose we serve by putting conditions on laws that already exist or policy that's already established. I think that's counterproductive as a matter of public policy. So, no, I, I would object to that.

COUNCILMEMBER JOHNSON: Okay. Mr. Chair, you know, and because this is a condition that again relates specifically to the community plan, I understand what Mr. Jencks argument is but I think that because this is already occurring just like other things are already occurring that may be, you know, not in compliance with current law and it may create redundancy, I would still prefer to see some reference to it so that at least this particular item would run directly with the land. We won't have to argue about whether it's applicable or not applicable or we won't have to,

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have people interpret or look at, you know . . . *(change tape, Side 1B)*. . . what the people meant when they adopted this community plan 'cause I know it's happening in my district. But I'm not sure of the exact wording but I would like to see something incorporated within this particular condition that we, we already have.

And I still for my purposes, Mr. Chair, I still can see things in here within this long lengthy condition that I know are not part of the verbiage within the "show me the water bill" so because they're project specific. So, I, I just don't feel comfortable moving on this one at this time until I can have independent verification that this is going to really satisfy the requirements that we have actually I guess looked at within the application and also within the ordinances that already exist. Thank you.

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

VICE-CHAIR PONTANILLA: Thank you. Question for . . .

CHAIR MOLINA: Mr. Pontanilla, are you still, question for the applicant or --

VICE-CHAIR PONTANILLA: No, not the applicant. No.

CHAIR MOLINA: --can we excuse Mr. Jencks? Members, any other questions for the applicant before I excuse him? Okay. Thank you, Mr. Jencks. Go ahead, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you. This is for the Planning Department. When you do review of projects of this magnitude and when you look at the water area, um, do you folks follow closely the community plans, community planned areas in regards to water conditions? In other words, you know, we, we, we all know that you can't take water from one community plan to another, to feed another community planned area.

MS. CUA: When . . . oh, Mister . . .

CHAIR MOLINA: I'm sorry. Go ahead, Ms. Cua.

MS. CUA: When we review a project we always use the community plan document to guide us in our analysis. We look at, there's, there's a number of issues in the community plan. We found in our experience that at times there are conflicting community plan policies, objectives within its own plan, within each individual plan. But, you know, we do as a whole point out which particular community plan policies a project complies with. And if there are community plan policy objectives that are clearly not, the project is not in compliance with we point those out as well. So, yes, we do look at not only water but we look at land use, we look at design, transportation. I mean we, we don't look at every, we don't list, we may not list every single section. We try and list the most applicable section.

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

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CHAIR MOLINA: Thank you, Mr. Pontanilla. And the Chair as a reminder to all please turn off your cell phones or pagers so we can proceed without disruptions. All right. Members, at this point the, I know Member Johnson has a concern about it. If it's the body's pleasure we could act on it just via consensus only and possibly return at a later time. Otherwise the Chair would recommend we just go ahead with, you know, we can go via consensus initially or we can just return to this at a later time. What is the pleasure of the body being that we only have five members? Because if we do take a formal vote all it takes is one person to say no and then it doesn't, you know, carry over. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Yeah. I, I, I would come back to this one here because I kind of interested in Corporation Counsel's response in regards to the proposed amendment, not amendment, ordinance that's, that's going to be before us in a couple of weeks.

CHAIR MOLINA: Yeah. Mr. Hopper, do you have any particular timetable when you can back to us on that?

MR. HOPPER: Well, a couple of comments. One again it's not finalized yet. So that could be subject to change. Another thing is that it's not enacted yet. So, if you're going to condition it you should have an alternative condition in the event that the bill doesn't pass. If you want to wait to see if the bill passes you could wait to see if it passes and then once it's finalized. But if I would tell you what the proposal is and you condition it based on that and then the proposal changes then you could have a problem. So, at, at the very least if, if you like, you know, if you think you're going to like the bill, again, the bill could change as it goes through second and final reading, but if you like the bill you could say well comply with that bill in the event that it passes. And also have a contingency in the event that the bill does not pass as I think is currently in the condition right now.

But I, I don't want to, you know, give you advice as far as what the bill will apply to because I know it, it, you know, it appears it's going to second and final reading and I'm not sure if it looks like there's going to be any change to that but you really just have to be careful with that because it could change, you know, later on. I can certainly take a look at the bill and see what it's proposed now but I would definitely at least caution that that's only what the proposed language is right now and that it might be difficult to rely on that until it's passed.

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

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. And second and final reading of this bill is not scheduled until December 7<sup>th</sup> and here we are November 19<sup>th</sup>. So, you know, just food for thought, Members. So, Member Pontanilla has expressed preference to wait rather than taking a consensus. Mr. Medeiros, any thoughts?

COUNCILMEMBER MEDEIROS: I, I can understand Member Pontanilla's position. But I'm also comfortable with a consensus.

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CHAIR MOLINA: Okay. Thank you. Member Johnson?

COUNCILMEMBER JOHNSON: The only thing that I would say is that over in the far left column on the 7<sup>th</sup> of November we voted on this. Therefore, to me, if you're going to reconsider something because we've already taken a formal vote and then doing it by consensus, I just, you know, for me it just does not feel right. I would prefer if we're going to vote on it and it passes or whatever then fine. Or, or Member Anderson may, you know, be perfectly comfortable with that with maybe reworking or adding on some components that are not included in the "show me the water bill". But because I know these are project specific the desal and the 2 million gallons I can guarantee you those are not in the water bill.

CHAIR MOLINA: Okay. Thank you, Member Johnson. And thank you for making the Chair aware that there was a formal vote taken initially. Staff, or maybe Mr. Hopper, because a formal vote was taken would we have to ask, I know this is an attempt to amend and take out language and substitute with other language, procedurally do we need to have a motion to reconsider or can we just flat out amend? Any, any recommendations? The Chair is kind of getting a feeling maybe we should, well, depending on what you say maybe we need to hold off on taking action.

MR. HOPPER: Well, again, the, you know, the, the procedural questions would be up to you but as I interpret Robert's Rules of Order you can do a motion to amend something previously adopted. If this was adopted by vote in the past or by consensus because at, at least as far as Robert's is concerned I, I don't see much of a difference between consensus and a, a vote; other than if there's a consensus then even if one person states that they object you have to take a vote. And consensus is supposed to be used, it's also known as taking action by no objections on items of generally minor importance. But, you know, the, the, if, if there is a consensus without any one objecting generally you can take action but that action does have the same weight generally as an action taken by, by a vote once there is a consensus reached.

But once you do a motion you can have people object as long as there's at least five votes in favor of or a majority of the Committee's votes in favor then the action is taken. So, one, just one member can't stop the process. But having said that based on this, if there has been a vote on this you would need to do a motion to amend something previously adopted and, and, and proceed from there. It wouldn't be a motion to reconsider because I think this was adopted several meetings ago. So, it's not, a motion to reconsider would have to be at the same meeting or the subsequent meeting and in this case you'd have to do a motion to amend something previously adopted. And I believe with the way Robert's handles those motions there would be a two-thirds vote of the Members present required because there hasn't been notice given ahead of time. Well, I guess there was notice given ahead of time but in any case you would need five votes to take that action regardless I think. So that would be the, the appropriate action I believe.

CHAIR MOLINA: Okay. Members, is that clear? I know that was a rather lengthy explanation from Mr. Hopper. So, I see, I can see Mr. Victorino, Mr. Medeiros would, wouldn't have a problem

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with consensus. Mr. Pontanilla is on, somewhat on a fence with this. And, Member Johnson, I know you . . .(inaudible) . . .

COUNCILMEMBER VICTORINO: Mr. Chair. Mr. Chair.

CHAIR MOLINA: Mr. Victorino.

COUNCILMEMBER VICTORINO: Yeah. I would prefer holding up on this until other Members are present. And again I tend to agree that, you know, I like everybody to feel comfortable with this. I'm not trying to supercede what we have agreed upon. I'm just trying to strengthen it. I mean that's, that was my intent in the whole case is to make it stronger not weaken it. And I may even bring back a little more verbiage I think with what Member Anderson, I mean, Member Johnson is mentioning and maybe a couple other small grammatical changes that maybe strengthen this even further to incorporate certain things that maybe they're afraid will be taken out from this whole thing. So let's, let's if we can hold up on this. Let's go to Member Johnson's conditions and maybe after we recess this afternoon when we come back we can have this clarified and we can move ahead on it, and, and see how it comes out. More Members will be present too. So, again --

CHAIR MOLINA: We hope.

COUNCILMEMBER VICTORINO: --I think that'd be fair. Yeah.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Staff, how many Members do we have present for this afternoon's session at this point? Can you just read off the names who have stated that they would be here for the afternoon session?

MS. NAKATA: Member Molina, Member Pontanilla, Member Baisa, Member Victorino, Member Johnson.

CHAIR MOLINA: Okay. So, we have one for this afternoon's session just one member who will be here who's not here right now who will be here for discussion of your proposal, Mr. Victorino.

COUNCILMEMBER VICTORINO: Well, what, what time in the afternoon because . . .

CHAIR MOLINA: One o'clock I believe is the time we had scheduled.

COUNCILMEMBER VICTORINO: One o'clock?

CHAIR MOLINA: Uh-huh. So, the Chair got the word that we would lose quorum about 4 p.m. today. Am I correct, Staff?

MS. NAKATA: That's correct, Mr. Chair.

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COUNCILMEMBER VICTORINO: See this is the problem I have with all of this. You know I, I don't and, you know, whether it's this or any other piece that we bring out today, we're going to have only five members deciding. You know it's a nine-member committee. And I understand, Mr. Chair, it's not, you cannot control this because Members have other obligations. I worked and I think some Members in this room worked to rearrange their schedules to be accommodating or else you wouldn't even have this meeting. I think we're trying hard to come to some kind of consensus and try to, to bring out these matters and get 'em resolved so we can come to a point taking a final vote. I'm not going to feel comfortable no matter what comes forward if only five members agree on it because eventually the Members who weren't here may come back and say no we don't and this is the reason why and then we take another vote and it changes.

So, I, I, we're going back and forth on these things. I'll hold up on this because it, to me it was more to make concurrency. I wanted concurrency. I want it to be where our laws and our ordinances for which we worked real hard be the premise of any subdivision or any project coming out. But if, if we're only going to have five no matter which part of the day we're talking about, I wouldn't feel comfortable. Not because I don't think it's going to pass that's not the issue. The point is we only five members making the decision. You know Mr. Medeiros' one was just incorporating what was existing and some of the other ones I think we're going to have the same challenge coming up. But I'll defer this to this afternoon and we'll see what happens this afternoon. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you. Well, Mr. Victorino, on the County Council we take action whether it's with five members or nine members and that's just the way it goes. And those who are not here have to be accountable to their constituents and explain to them why they weren't here for the vote. But nonetheless, you know, if you, it's like keeping a department open. You operate full staff or with half staff but the work must go on. So, anyway, just wanted to share that with you. And of course the other option too, Mr. Victorino, you could withdraw this consideration too as, if you're not comfortable with only say if it gets to a point we only five members there's that option for you as well to withdraw it and just keep what was voted on initially. So, I'll just leave that for you folks to ponder on.

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: So, you're going to come back to this, right?

CHAIR MOLINA: I believe that seems to be the feeling of the body so, you know, I'm open to whatever the body, majority of the body wants. So, if that is what the body wants we shall discuss this at 1:00 p.m. when we reconvene.

VICE-CHAIR PONTANILLA: I got a question for Corporation Counsel.

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CHAIR MOLINA: Proceed, Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Knowing that this is nine-member committee and what you stated earlier that you need two-thirds votes, if we go by consensus would it be the consensus of five members or the consensus of nine members?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: Well, you'd be, see because I'm not sure about going by consensus to amend something that's previously adopted. They talk about taking action by consensus I guess it would be, it would be strange, it would be a motion to amend that you would pass by consensus. Consensus by definition is everybody. So you would at least have, you'd have more than the two-thirds. You'd have 100 percent. So, if, if you, you know, either way you have to have a motion that everybody or at least two-thirds of the body is comfortable with. If you've got nine members here you could have, you know, six members vote on it and, and that would be okay. If you've got, or you're talking about, yeah, it's, it's the members that are actually there so it would, you know, five members, you could have six if you had nine but you could still take action by five because that's still more than two-thirds of the members that are currently sitting. It's not two-thirds of which the body is entitled to I believe. I do not think that that's a, again, this is my interpretation of Robert's Rules and your Chair can either correct me if I'm wrong or proceed in a different manner but that's how I would interpret Robert's Rules.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. So, we'll revisit this matter. And again it's just whoever's here. If it's only five people then so be it. So, and it's, it's the policy call of the Committee if that's what you want. Otherwise, if the, there's no consensus or some Members feel that because we had only four people that were in favor of and one then we could conceivably just leave the condition as is without the, the change. So, again, it's the policy call in my opinion of whoever is here at the time the vote is taken or the consensus vote is considered.

So with that being said let us go to Member Johnson's consideration and . . .

COUNCILMEMBER JOHNSON: And I know this, thank you, Chair Molina, this has been long and arduous but I want to thank, and she's not here today, but Deputy Director Colleen Suyama helped myself and Staff draft the condition. And these are related to-and, Staff, can you tell me which page because on my transmittal I guess it would be, I distributed these on the 8<sup>th</sup> of November, which page the transportation conditions are on?

CHAIR MOLINA: Is that Page 2, Staff?

MS. NAKATA: Yes, that's correct, Mr. Chair, but --

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COUNCILMEMBER JOHNSON: Okay.

MS. NAKATA: --Staff's understanding was that these would be in addition to and not in replacement of an existing condition.

COUNCILMEMBER JOHNSON: Right. Right. And because I visited, and I'm sorry that she isn't here to really, you know, take credit for this but I really appreciate the input of both Staff and Ms. Suyama, because the condition would not be in regard to the roadways which is principally what's already there. But it would be "Construction-Related Transportation Management Plan" and then a separate condition would be the "Post-Construction Transportation Management Plan". And I'll just read it into the record. The first condition would be "That prior to the commencement of any construction activity Honua`ula Partners, LLC, its successors and permitted assigns, shall develop and submit a Transportation Management Plan to be reviewed and approved by the State DOT, the County Department of Public Works, and County Department of Transportation. The purpose of the TMP shall be to reduce traffic generated by construction, by construction activity related to the Kaonoulu Light Industrial Subdivision and Kihei-Makena Project District 9 including traffic generated by the improvements to Piilani Highway between Kilohana Drive and Wailea Ike Drive. The Transportation Management Plan shall provide for programs such as park and ride, shuttles, and/or restrictions on worker access to ongoing construction activity during peak hour traffic. Upon approval project contractor shall implement the TMP during construction activities. Honua`ula Partners, LLC, its successors and permitted assigns, shall submit an annual report to the State Department of Transportation, County Department of Public Works, County Department of Transportation, and the Council to document the success of the TMP in meeting its benchmarks of reducing traffic during project construction."

Now, I know that's a mouthful but because we had some of the other concerns that had basically been addressed where we didn't want construction activity and specifically a lot of the problems that were cropping up potentially when Piilani was going to be worked on we came up with this wording. And I just ask for the Members if you want me to make a formal motion I will do so, Mr. Chair, but if you want to discuss it first that's fine too.

CHAIR MOLINA: Okay. Why don't we go ahead and discuss it first and get feedback from the Members. Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah. I just wanted to know this Transportation Management Plan is that part of the applicant's requirements or is this going to be something new that has to be produced?

CHAIR MOLINA: If you want, you want some clarification from the applicant because I know he's been in contact with the State DOT or maybe Member Johnson?

COUNCILMEMBER MEDEIROS: Well, either the applicant or the Planning Department who handles the application process.

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CHAIR MOLINA: Okay. And I know we don't have Director Suyama here --

COUNCILMEMBER MEDEIROS: Oh.

CHAIR MOLINA: --so I, I don't know if-oh, okay, Director Suyama is walking into the room. In the meantime, maybe, Mr. Jencks, if you'd like to add some additional insight for Mr. Medeiros's question and then we can get remarks from the Planning, Deputy Planning Director. Mr. Jencks?

MR. JENCKS: Thank you, Mr. Chair. Yeah, we, you know, we did talk to State DOT about this concept. We also talked to, with the Department of Planning about it briefly. And Mr. Goodfellow and I discussed it with Councilmember Anderson as a way to help with the traffic flow on Piilani Highway during the course of construction. And it's tied into, Members, Condition 2 which addresses the construction on Piilani Highway. If you recall, we were trying to make it so that we could get on site and do work and use the material that we generate out of that expansion work on Piilani Highway and the idea was to develop this plan as Ms. Johnson has proposed so we could handle the traffic and really, really help out with the traffic flow. And, and I would say to you today vote on this condition. This is a good condition. It makes sense to us and we'll, we'll, we'll do it.

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

COUNCILMEMBER MEDEIROS: Yeah, just a follow up. So, this would be a Transportation Management Plan that would be developed or is in the process of being developed right now?

MR. JENCKS: It would be developed.

COUNCILMEMBER MEDEIROS: I see.

MR. JENCKS: We, we have a model already for it. We'll just modify it to this requirement.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Jencks. Mahalo, Mr. Chairman.

CHAIR MOLINA: Thank you, Mr. Medeiros. Members, any other questions for the applicant before I ask for comments from the Deputy Director of Planning? Seeing none. Thank you. Deputy Director Suyama, are you able to give additional insight to Member Johnson's condition related to the "Construction-Related Transportation Management Plan"?

MS. SUYAMA: Okay. Well, you know, we have been in discussions with a lot of developers especially on the west side. And one of the things that we've been finding out is that the old premise is that if you build the roads that it's going to solve your traffic problems. And what we're finding out is that's not the case because it takes so much time for the roads to be completed because you have all these permitting processes, you have funding problems in terms of getting the construction monies for the, for the roads that that's not an, a viable solution. But then Transportation

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Management Plans which is you take off traffic from the highways and you do it in perpetuity is more of a better solution because it runs with the projects that, you know, you have to come in with some kind of program in which you're either going to take employees off the, off the road or you're going to take visitors off the road and then that way, you know, you save the capacity of the existing roadways.

And, you know, at first we were only talking to the developers about their project specific transportation increases but Councilwoman Ander..., Johnson had a good point it's not only the project transportation that's, that traffic that's an issue it's also with these large projects we have construction traffic. And if they can implement a Transportation Management Plan for the construction traffic however you do it whether it's by park and ride systems, bussing or vanpools but you come up with a system in which you reduce the amount of traffic from the construction industry coming to the property that also is a viable solution. And that's why we support Councilwoman's . . . Johnson's proposed traffic, you know, traffic condition.

COUNCILMEMBER VICTORINO: Mr. Chair?

COUNCILMEMBER MEDEIROS: Yeah. Mr. Chair, I want to complete my questioning.

CHAIR MOLINA: Okay. Proceed, Mr. Medeiros --

COUNCILMEMBER MEDEIROS: Thank you.

CHAIR MOLINA: --followed by Mr. Victorino.

COUNCILMEMBER MEDEIROS: Yes, Ms. Suyama, so currently the requirements of an applicant does it include a Transportation Management Plan or is this something that the Planning Department encourages the applicant to do voluntarily? What, what is the requirements regarding a Transportation Management Plan?

MS. SUYAMA: It's something that's come up in the recent months. It's not something that is required by any County ordinance. It's not required unless it's a specific condition of zoning and in some cases it will be requirements in terms of the Planning Commission making their approval process. So, we put developers on notice that this is coming. We have been working with both the County Department of Transportation and the Department of Public Works as to what should be included in this Transportation Management Plan. And it's, it's an evolving process. You know we started with one developer and there's other developers that have come up with their proposals. And as each one is looking at their, their Transportation Management Plans there's been some refinement of those plans. And I think it's going to be an ongoing process as to what eventually becomes the final transportation plan that's approved by the County.

And we're looking at the approval of that Transportation Management Plan at this time that because it's approval by the Planning Commission that the Planning Commission would approve the plan with input from both, from the County Department of Transportation, the County

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Department of Public Works, as well as we're including the State Department of Transportation in the, in the process because it also involves some of the State highway systems. That once we have this implemented we're looking at, you know, hoping that, you know, a lot of these large developments will start encouraging like bus service in which they may be paying for bus service or coming in cooperation with the County in upgrading the County bus service so that their clientele whether it's their workers or the visitors are using the public transportation systems to reduce the individual cars that are on the roadway.

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

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

COUNCILMEMBER VICTORINO: Yes, thank you. And, and those are, Ms. Suyama, very admirable ideas and I think they're going to be a real big plus as far as this, this project and all projects in the future. What I wanted to also see if, if part of this plan would include is the use of heavy equipment trucks and especially dump trucks that during the peak hours, and you know what the peak hours are, that none of these big rigs would be on the roadways during those periods of time. Because again I think one of the other drawbacks is when you have big rigs get stuck in traffic it takes a lot to get a rig moving whether it's a cement truck, a dump truck, a tractor trailer, whatever. And so, is that part of the plan or are we just talking basically the movement of employees using public transportation? Ms. Suyama, is that what the plan originally, and I know it's evolving, so that's my, my, my question, is this inclusive of heavy equipment on the roadway during peak hours?

CHAIR MOLINA: Director?

MS. SUYAMA: I think the way the condition is written it means all construction traffic. I think we were focusing mostly on the construction worker traffic. But I don't think that the way it's written that you can exclude, you know, the actual heavy vehicles that are, are transporting materials as well as equipment to the construction site. So --

COUNCILMEMBER VICTORINO: Good.

MS. SUYAMA: --I think that's something we would look at total.

COUNCILMEMBER VICTORINO: Yeah, I would appreciate that because I think that's really in conjunction in what you're, you're also proposing would, would really, really help, you know, in somewhat mitigating the peak traffic hours and having these big rigs at the same time on the road. Now, you know, again does that limit the hours of, of being able to move whatever equipment and whatever needs for the construction? It may at times but I think in the overall scheme of things it's more for the public safety and mitigating these traffic jams that we are getting to become accustomed to. And again going, going to Lahaina a lot of times that's one of things I notice when you have a big rig in front of you traffic starts to pile up behind of it because when they got to stop and go, stop and go, when they start it takes a lot of time to get going

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again. So, you know, I think that would be a suggestion I hope you guys would incorporate in that. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Members, the Chair shall like to share his thoughts. It is rather wordy but it's very in-depth and I think it covers the bases as they say. So, I, for myself I have no problems supporting the condition. So, Member Johnson, if you'd like to propose a motion?

COUNCILMEMBER JOHNSON: Yes. And should I take both of the items together? I could read the second one as well because I think Deputy Director Suyama already covered her comments on the second part of it which was basically the post-construction activity such as, you know, park and ride also for people living within the . . .

CHAIR MOLINA: Okay. Member Johnson, if you'll, you'll allow the Chair to just consult with Staff. Would it better we consider this motion, this proposal as a separate condition or can we go ahead and incorporate the language of the second proposal from Member Johnson into one?

MS. NAKATA: I think either way is fine, Mr. Chair, although the second component hasn't yet been read into the record nor has the applicant commented on it.

CHAIR MOLINA: Okay. Members, Member Johnson has asked us to consider the second paragraph on your document and if you would allow her, the Chair has no problems with allowing her to read that into the record, and if it's something you'd like to incorporate all in one motion the Chair has no problems. Any objections? Well, why don't we do this? Member Johnson, you want to go ahead and read the second . . .

COUNCILMEMBER JOHNSON: I'll read the second one . . .

CHAIR MOLINA: It is related to the first one.

COUNCILMEMBER JOHNSON: I'll read the second one also. And this, Members, is very similar to the first one except it's Post-Construction Transportation Management Plan. It reads as follows: "That as part of the Project District Phase II application Honua`ula Partners, LLC, its successors and permitted assigns, shall submit a Transportation Management Plan to reduce the dependency on individual vehicular transportation modes. The TMP shall be reviewed and approved by the State Department of Transportation, County Department of Public Works, and the County Department of Transportation prior to Project District Phase II approval."

CHAIR MOLINA: Okay. Members, any comments on the additional language that Member Johnson is asking us to consider as part of one motion?

COUNCILMEMBER VICTORINO: No.

CHAIR MOLINA: Okay. Seeing none. So, Member Johnson, you . . .(inaudible) . . .

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COUNCILMEMBER JOHNSON: Yes, Mr. Chair. I would move that the Construction-Related Transportation Management . . .(*change tape, Side 2A*) . . . Plan condition as well as the Post-Construction Transportation Management Plan be added to the conditions for Wailea 670.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay. Thank you. It's been motioned by Member Johnson, seconded by Mr. Victorino. Any additional discussion? Member Johnson?

COUNCILMEMBER JOHNSON: Only that I really appreciate the assistance of both Staff and also Deputy Director Suyama because I think that as Mr. Victorino had mentioned one of the problems we always encounter is if we get too wordy and we get too *manini* in some of the requirements such as I had mentioned originally off peak hours, limiting traffic and those things, I think in my original conditions. When we looked at some of the components that I was concerned about and also that others are concerned about I felt that by doing this it would give the Department of Planning authority to review these along with the State Department of Transportation, Public Works, and the County Department of Transportation, and come up with a better way so that eventually these can then become a standard for perhaps incorporation into the projects that really will have the larger impacts on our community.

So, I thank the Members and I also thank Mr. Jencks for his agreement that these are conditions and they should really be applicable to everyone but we have to start somewhere. So, I want to thank the Staff and also Ms. Suyama for their assistance. Thank you.

CHAIR MOLINA: Thank you, Member Johnson.

COUNCILMEMBER VICTORINO: Mr. Chair.

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah, and I too want to thank the Staff. I think this is a step in the right direction and I think we've, again, we've taken it from where it was to where I think it's applicable and something, somehow manageable by the Departments and this Council or other Councils in the future will have a means to be able to judge how these, these projects come along as far as both pre-construction and post-construction. I think that's what we've covered today. And that's why I have no problem in supporting the, the amendment to add to our, to our conditions. And again being that this project is, and I've said this many times and I'll continue to say it, the poster child of all future developments and projects that, you know, the developers can now understand what needs to be done. I think it's only fair, right, Ms. Suyama, that this will be something that we can all live with? Because the roadways will not change dramatically over the years and so we all have got to work together to somehow mitigate the traffic especially during our peak periods. Because again when you travel many of the roads during non-peak hours you don't have the major traffic jams but get on the road anywhere from 3:30 to 5:30-6:00 you got a

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traffic jam. And I think that's pretty consistent with most communities that have grown, most communities throughout the United States. So, thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Excuse me. Members, before the Chair calls for the vote I guess to be consistent with the first proposal from Member Johnson, we got input from Mr. Jencks. I'd like to ask him to give his additional comments on this second part of the, of the Post-Construction Transportation Management Plan.

MR. JENCKS: Thank you, Mr. Chair. We would support both of Member Johnson's proposed conditions. I'd like to remind the Members, however, that if you look at, when you get a chance after this vote is taken with regard to Condition 2, the whole idea here was to revise 2.a. to allow us to be able to work onsite while we're doing the work on Piilani Highway. So taking out that perhaps a second sentence in, in 2.a. would be the way to go. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Jencks. Mr. Jencks, you make reference to 2.a. the Piilani Highway from Kilohana Drive, is that the passage that you're making reference to?

MR. JENCKS: Yes, sir.

CHAIR MOLINA: Okay.

MR. JENCKS: It was just the second sentence that provided the restriction on our ability to even do any work onsite. The way it's written today we wouldn't be able to do anything until we were complete. The whole idea of this Transportation Management Plan approach was to allow us to get onsite to do work.

CHAIR MOLINA: Okay. Member, Member Johnson, any additional comments?

COUNCILMEMBER JOHNSON: No. And I think that is the intent of this because it was kind of a Catch-22. You couldn't do one without the other. You can't get there from here kind of concept. So, I think that's appropriate.

CHAIR MOLINA: Okay. So, a removal of 2.a. then?

COUNCILMEMBER JOHNSON: So, I believe that's, this, well, it would be the second sentence of 2.a.

CHAIR MOLINA: Second, the, the improvements shall be constructed . . .

COUNCILMEMBER JOHNSON: "The improvements shall be completed prior to an issuance of a grading permit for the site" because I mean if, if they're going to develop a plan all this would be taken into consideration. So --

CHAIR MOLINA: Okay.

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COUNCILMEMBER JOHNSON: --if the developer has any more comments but that would be my understanding then is that this would be incorporated into . . . well, I, I believe if you just add it as a separate condition then down at the bottom because if you add it into 2.a. it's going to make a huge long condition.

CHAIR MOLINA: Or maybe we could --

COUNCILMEMBER JOHNSON: So, maybe like . . .

CHAIR MOLINA: --insert an i. to i. or something.

COUNCILMEMBER JOHNSON: An i., i. and j. perhaps.

CHAIR MOLINA: Okay. Staff . . .

COUNCILMEMBER JOHNSON: And --

CHAIR MOLINA: Oh, sorry, go ahead, Member Johnson.

COUNCILMEMBER JOHNSON: --and also one other, this is just a housekeeping but County Department of Public Works and Environmental Management. So, I believe that is, is that . . .

CHAIR MOLINA: Or are you talking about under Post-Construction Management?

COUNCILMEMBER JOHNSON: Yeah, the wording because the way my condition is worded I don't believe we have the full department name.

CHAIR MOLINA: Okay. So that would be just a friendly amendment.

COUNCILMEMBER JOHNSON: Is that, is that . . .

VICE-CHAIR PONTANILLA: It's all covered.

COUNCILMEMBER JOHNSON: Oh, it's been separated that's right.

COUNCILMEMBER VICTORINO: Yeah.

COUNCILMEMBER JOHNSON: Sorry about that. So, it, it is correct the way that it is.

CHAIR MOLINA: Okay. Thank you. So, Members, we could incorporate-Staff, any comments about incorporating Member Johnson's condition I guess listing it as 2.i. and removing the last sentence of 2.a. as a I guess friendly amendment? Any comments, Staff? Consideration has been to remove the second sentence of 2.a. and Member Johnson's proposal added in as 2.i.

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MS. NAKATA: I think it would be cleaner, Mr. Chair, just to keep the Transportation Management Plan conditions as a separate condition that will be given its own number.

CHAIR MOLINA: Okay.

MS. NAKATA: And then to take a separate vote on the deletion of the second sentence for 2.a.

CHAIR MOLINA: Okay. Thank you. Director, did you have a comment?

MS. SUYAMA: I agree with your Staff because 1. is improvements, 2.a., the Condition 2 is actually improvements which you folks really haven't voted on yet. You just have some consensus. And the other two is actually, you know, traffic, you know, transportation mitigation through coming up with a Transportation Management Plan, which is a management of traffic versus an improvement.

COUNCILMEMBER JOHNSON: Okay.

CHAIR MOLINA: Okay. So what we'll do we'll consider Member Johnson's as a separate condition outside of Condition 2 then just, a condition by itself and we'll come up with a number for it at a later time should this condition pass. Is that understood, Members?

COUNCILMEMBER VICTORINO: Yeah.

COUNCILMEMBER JOHNSON: Uh-huh.

CHAIR MOLINA: Okay. The Chair will call for the vote on Member Johnson's condition related to Construction-Related Transportation Management Plan and Post-Construction Transportation Management Plan. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed. Okay. Thank you. The Chair will mark it five-zero; four excusals - Members Mateo, Anderson, Baisa, and Hokama.

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

**NOES:**      **None.**

**EXC.:**      **Councilmembers Anderson, Baisa, Hokama, and Mateo.**

**ABSENT:**   **None.**

**ABSTAIN:**   **None.**

**MOTION CARRIED**

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

CHAIR MOLINA: Members, I think it's about time for a short recess so why don't we take, take ten and come back at 10:35. Meeting in recess. . . .(gavel). . .

**RECESS:**    **10:25 a.m.**

**RECONVENE:** **10:41 a.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. Thank you, Members, for that break. At this point, the Chair would like to stay on Condition 2, which is on Page 2 of your matrix. And we had a consideration to remove the second sentence 2.a., the sentence to be removed as read states: "The improvement shall be constructed prior to occupancy of the first unit." Members, any objections to the removal of that sentence?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. So we'll just do this as a friendly amendment if you will. So we will remove that sentence from 2.a.

**COUNCIL MEMBERS VOICED NO OBJECTIONS** (excused: MA, GB, RH, DM).

CHAIR MOLINA: And, Members, we never did conduct an official vote on this particular condition. Is the body ready to act on this condition --

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: --with the removal of that second sentence as well?

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COUNCILMEMBER JOHNSON: Uh-huh.

CHAIR MOLINA: Okay. Members, then the Chair will entertain a motion to approve Condition 2 . . .

COUNCILMEMBER JOHNSON: So moved.

CHAIR MOLINA: Member Johnson. Okay.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Moved by Member Johnson, seconded by Member Victorino. Any additional discussion for Condition 2? Member Johnson?

COUNCILMEMBER JOHNSON: I, I just wanted to state for the record that the condition that we're looking at is the condition in the far right column beginning with 2 with sub letters a. through h.

CHAIR MOLINA: That is correct. Okay. Members, that is in the far right column under consensus or vote letters 2.a. through h. That's what we're voting on. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Two, 2.a. to --

CHAIR MOLINA: Through h. Yeah.

VICE-CHAIR PONTANILLA: --h.

CHAIR MOLINA: Yeah, on Page 2 of your matrix on the far right column.

VICE-CHAIR PONTANILLA: So, i. wasn't a consensus, yeah.

CHAIR MOLINA: Well, i. we're going to do, we, we did it as a separate vote, a separate condition I should say. So that will be given its appropriate number.

COUNCILMEMBER VICTORINO: So, Mr. Chair, just so that --

CHAIR MOLINA: Mr. Victorino.

COUNCILMEMBER VICTORINO: --I'm clear with this. Through, a. through h. with that one sentence "The improvements shall be completed prior to issuance of grading permits --

CHAIR MOLINA: Yeah.

COUNCILMEMBER VICTORINO: --for the site."

CHAIR MOLINA: You're talking about 2.a., the second sentence.

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COUNCILMEMBER VICTORINO: 2.a., the second sentence, right?

CHAIR MOLINA: Yeah.

COUNCILMEMBER VICTORINO: The one we removed, right?

CHAIR MOLINA: Yeah.

COUNCILMEMBER VICTORINO: Is that the one we're referring to?

CHAIR MOLINA: Well, let me, let me double check. Okay. I think I was looking, I thought Mr. Jencks was referring to the Maui Planning Commission second sentence that we had earlier removed. "The improvements shall be completed prior to issuance of a grading permit for the site." That's under 2.a. under the consensus or vote. The Maui Planning Commission was the language we had removed. So, Members, is it the will of the body then to remove the second sentence of 2.a. under the consensus or vote on what we are actually voting on?

VICE-CHAIR PONTANILLA: That was my understanding.

COUNCILMEMBER VICTORINO: That was my understanding too, Mr. Chair.

CHAIR MOLINA: Okay. Okay. All right. Let's, why don't we just informally then if there's no objections remove the second sentence that states: "The improvements shall be completed prior to issuance of a grading permit for the site." 'Cause earlier when we were discussing it, we discussed the, the sentence that was in the Maui Planning Commission condition and there was no notification made to the Chair about that. So, for the record we will then remove from 2.a. under consensus or vote, "The improvements shall be completed prior to issuance of a grading permit for the site." Is that understood? Any objections to the removal of that?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. All right. Thank you. And joining us is Member Baisa. We're currently voting on Condition 2. Any comments, Member Baisa?

COUNCILMEMBER BAISA: No, sir. I need a moment to catch up.

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

CHAIR MOLINA: Okay. All right. Seeing none then, Members, we shall conduct a vote for Condition 2. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.



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may have an extended discussion, I just want to, the Chair needs assurances that you'll stay at least so we can continue to discuss this if that is the will of those of you who may have to leave.

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: All right. We'll just go ahead and proceed as, as far as we can. Member Johnson, are you able to respond to Mr. Victorino's question?

COUNCILMEMBER JOHNSON: Yes. And, and the only thing that I was speaking about was the incorporation of a condition that Mr. Mayer raised as an issue which would be the water transmission. And so, my . . . I guess the only addition of language that I would add in is as long as whatever condition we adopt is consistent with the community plan both for that area and surrounding or, or just say consistent with the community plan and the General Plan.

CHAIR MOLINA: Okay. All right. We'll take that into consideration. Mr. Victorino, any comments?

COUNCILMEMBER VICTORINO: I have no objection if you want to make that a friendly amendment to be added to that I have no problem with that.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Um, then --

CHAIR MOLINA: Member Johnson.

COUNCILMEMBER JOHNSON: --yes, then I guess I would ask for Staff's assistance to add in that particular wording which would be I believe at the end of Mr. Victorino's.

CHAIR MOLINA: This would be after the word "enacted", Member Johnson, the second paragraph?

COUNCILMEMBER JOHNSON: Yes. I have to find his condition again.

CHAIR MOLINA: Okay. Now, Member Baisa, I know you just came in here. We're on Mr. Victorino's condition dated November 13<sup>th</sup> . . .

COUNCILMEMBER BAISA: Chair, thank you very much but I've had the opportunity, thank God, to discuss this with, with Mr. Mayer and also with the applicant. So, I'm comfortable.

CHAIR MOLINA: Okay. Thank you very much, Member Baisa. Staff, do you need a few moments to consider the language as proposed by Member Johnson?

MS. NAKATA: Yes, actually, if Staff could have that repeated please.

CHAIR MOLINA: Okay. Member Johnson, can you restate?

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COUNCILMEMBER JOHNSON: The, the wording would be that I guess in the last sentence, "In the alternative Honua`ula Partners, LLC, its successors and permitted assigns" it should not "may"-I'm, I'm going to make another friendly amendment-not "may" but "shall comply with applicable water ordinances that pertain to the supply of water from sources of the County of Maui when such ordinances are enacted provided that all applicable community plan, that all ordinances are consistent with the community plan-well, that doesn't make sense-when such ordinances are enacted." And . . . I don't know. For, for Staff then I would have to state that with regard to Mr. Mayer's consideration or his particular concern that the ordinances that we enact may be specific to one community plan but may actually be as I guess was discussed earlier by Ann Cua, she said they may create problems with another community plan. So, I guess, Mr. Chair, I think what I'm going to need is just a couple minutes --

CHAIR MOLINA: Sure.

COUNCILMEMBER JOHNSON: --because I don't want to make this inconsistent because the issue that was raised is that, what is all right in one community plan district may not be all right in another community plan district. And particularly with this reply or this actually is in regard to development of water systems. What Mr. Mayer was concerned with was transmission of water not so much the development of the source itself. So, it may be appropriate not to add it into this because this is, this is in regard to development. But I'll try and work with Staff to just come up with a simplified condition on transmission and consistency with community plan. Thank you.

CHAIR MOLINA: Okay. All right. Members, do you know what let's go ahead and do this. Let's take a break. I'll have Member Johnson work with Staff --

COUNCILMEMBER JOHNSON: Yeah.

CHAIR MOLINA: --to incorporate the additional language to Mr. Victorino's proposal. We don't have a formal motion on the floor as of this time.

COUNCILMEMBER VICTORINO: No.

CHAIR MOLINA: So, why don't we go ahead and take a short break. And the Chair is going to make a recommendation as to how we'll proceed the rest of this afternoon. So, if you give the Chair a couple of minutes then we'll come back and we'll see what we have. So, meeting in recess subject to the call of the Chair. . . .(gavel). . .

**RECESS: 10:50 a.m.**

**RECONVENE: 10:52 a.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting for October 18, 2007 is now back in session. It is 10:52 to be exact. Members, the Chair would like to ask for your

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consideration of this way of proceeding for the rest of the day. I would like to give Staff and Member Johnson a little bit more time to work on this consideration of Mr. Victorino. And maybe we'll take our break already afternoon break and we can come back at 1 o'clock unless maybe for the record we'll have Member Johnson read it into the record.

COUNCILMEMBER JOHNSON: I, I do have it right now and with regard to the, and I just checked with Mr. Jencks too, anyway, this would be on Mr. Victorino's amendment on the end of the first sentence "That Honua`ula Partners, LLC, its successors and permitted assigns, shall at their own cost and expense, develop and maintain and operate or cause to be developed, maintained, and operated a private water source, storage facilities, and transmission lines for the Wailea 670 Project in accordance with Department of Water Supply standards and all applicable community plans."

CHAIR MOLINA: Okay. That is the language Member Johnson wants us to incorporate into Mr. Victorino's. Mr. Victorino, any comments?

COUNCILMEMBER VICTORINO: No, I have no problem with that. I, I concur wholeheartedly and I have no problem in getting that put in and as part of the amendment.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: And if we can do it as a friendly amendment, a friendly addition to the amendment I see no-but we don't have any formal amendment . . .

CHAIR MOLINA: Yeah. No motion is on the floor as of yet.

COUNCILMEMBER VICTORINO: Okay. So, so, I can add that and not a problem.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: And, and, Mr. Chair, and then in, in the final, and, and this was one little part that I thought would also give more clarity, In the alternative . . . this is in the third sentence, "In the alternative Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with applicable water ordinances that pertain to the supply and transmission of water from sources of the County of Maui when such ordinances are enacted."

CHAIR MOLINA: Okay. Members, are we all clear on the language?

COUNCILMEMBER BAISA: Yes.

CHAIR MOLINA: Okay. So, what we're considering right now we don't have a formal motion on the floor but I presume when the motion is made it would be to delete that large paragraph under the consensus or vote column on Page 1 of your matrix and substitute it with Mr. Victorino's language as well as Member Johnson's language. Is everybody --

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COUNCILMEMBER BAISA: Yes.

CHAIR MOLINA: --understood on that?

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: Okay. So, the Chair will await a motion to be proposed.

COUNCILMEMBER VICTORINO: So moved, Mr. Chair.

CHAIR MOLINA: Okay. It's been motioned by Mr. Victorino.

COUNCILMEMBER JOHNSON: Second.

CHAIR MOLINA: And seconded by Member Johnson to amend Condition 1 related to water. Discussion, Members? Mr. Victorino, additional discussion as the maker of the first, the initial motion? And, Member Johnson, as the seconder of the motion with your incorporated language any additional discussion? We'll see, seek Mr. Victorino's comments first.

COUNCILMEMBER VICTORINO: Very quickly, Mr. Chair. Thank you. And I'd like to thank Ms. Johnson for adding that in and, you know, clarifying it. Thank you, Mr. Mayer, bringing that forward. I was thinking of source not so much transmission lines but now we've gotten that all incorporated and I think something that all of us can work with and have concurrency. And I think that was what I was trying to get is we have a new enactment coming through and any others that come through that have more teeth than what we put in our conditions I think is well worth bringing forward. So, thank you, Mr. Chair. And thank you, Ms. Johnson, for your, your assistance.

CHAIR MOLINA: Thank you, Mr. Victorino. Member Johnson, any additional comments?

COUNCILMEMBER JOHNSON: No. Just that I, I was unable to reach Member Anderson and because the bill is going to need two readings, we've already discussed the language, if there is something that is a huge oversight on my part I'm sure I will hear about it. But in, in the absence of that information and also with the consideration that had been raised by Mr. Mayer, I think it's important that, you know, if, if we really feel strongly about it then we'll also move forward with the rest of the water bill that will apply to all developments and hopefully including this one as well. So, I think that I'm satisfied for the time being with this particular language. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Member Johnson. And Mr. Medeiros has just joined us. I trust you've been following the discussion when you were back in your office. Okay. So, with no other discussion the Chair will call for the vote for the Condition 1 amendment. Oh, Mr. Pontanilla.

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VICE-CHAIR PONTANILLA: Thank you. For me I'll be supporting the motion but with some reservations. The consensus vote that we took in regards to this particular project, you know, I know Member Anderson is not here, this would have been a project specific in regards to the consensus vote that we took. So, again, you know, I think Member Anderson really provided some testimony in regards to this or arguments in regards to, you know, what the consensus vote that we took. But again I'll be supporting Member Victorino's condition but with reservations. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Pontanilla. Staff, just for verification the vote shows in the column as carried to amend as shown in right most column. Now, there was a formal vote if I'm correct on this or was this just a consensus vote?

MS. NAKATA: Yes, there was a vote, Mr. Chair.

CHAIR MOLINA: A formal vote, right, with a motion? Okay. So it was not a consensus vote, Mr. Pontanilla. It was a formal vote. And we're, we're amending Condition 1 with Mr. Victorino and Member Johnson's proposal.

VICE-CHAIR PONTANILLA: Thank you, Chair. I just was reading the heading.

CHAIR MOLINA: Yeah. I know it's somewhat, yeah, yeah, I know sometimes it can be a little confusing to determine which is consensus and which is the vote. But this particular one there was a formal vote taken so.

COUNCILMEMBER MEDEIROS: Mr. Chair?

CHAIR MOLINA: Mr. Medeiros followed by Member Johnson.

COUNCILMEMBER MEDEIROS: Thank you, Member Johnson. I just, I think I was on the way from my office back here. Could the Staff read --

CHAIR MOLINA: Read the . . .

COUNCILMEMBER MEDEIROS: --Member Johnson's portion of it?

CHAIR MOLINA: Okay. Member, excuse me, Staff, please read Member Johnson's proposal as it I guess attached to Mr. Victorino's --

COUNCILMEMBER MEDEIROS: Right.

CHAIR MOLINA: --proposal.

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MS. NAKATA: Yes. Member Johnson proposed revisions to both paragraphs of Member Victorino's proposal, "That Honua`ula Partners, LLC, its successors and permitted assigns, shall at their own cost and expense, develop, maintain, and operate or cause to be developed, maintained, and operated a private water source, storage facilities, and transmission lines for the Wailea 670 Project in accordance with Department of Water Supply standards and all applicable community plans. Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with all reporting requirements of the State Commission and Water Resource Management. In the alternative Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with applicable water ordinances that pertain to the supply of water from sources of the County of Maui when such ordinances are enacted."

COUNCILMEMBER JOHNSON: One, one addition and it was "supply and transmission".

CHAIR MOLINA: Staff, you made note of Member Johnson's addition?

MS. NAKATA: Yes, Mr. Chair.

CHAIR MOLINA: Okay. All right. Member Medeiros?

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you. All right. Members, are we, okay, I'm sorry. Member Johnson?

COUNCILMEMBER JOHNSON: No, I just wanted to, and, and, and I share Member Pontanilla's concerns because I know that this took a long time and a lot of dialogue to get to this and I was the one who defended, you know, actually some of the wording. I believe that, you know, at this point in time to move things forward and out of courtesy to the other Members I will support this. I believe if there are components of this particular condition that we're currently going to be looking at eliminating then I believe that those may be reincorporated if it is absolutely critical that that be done. And because this is not yet out of Committee and it requires at least two readings hopefully by the time it gets to the first reading we will have that language in place. And it's not like we haven't discussed it.

CHAIR MOLINA: Yeah.

COUNCILMEMBER JOHNSON: So, you know, it would just be a potential reinstatement for those things. So, I would like to assure Member Pontanilla that I will make every effort to contact Member Anderson and then if there are components that we believe are really, you know, key to this project, I think that those can be reincorporated as either a separate condition or incorporated in the language that we currently have. Thank you.

CHAIR MOLINA: Thank you, Member Johnson.

MS. NAKATA: Mr. Chair.

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CHAIR MOLINA: Staff?

MS. NAKATA: Could Staff please clarify in the reference in the second paragraph "to the supply of water from", excuse me, "the supply and transmission of water from sources of the County of Maui" does that mean that the developer is able to utilize a public water source? It's stated "In the alternative to the development of the private water source" so Staff is just a bit unclear as to the intent.

CHAIR MOLINA: Okay. Mr. Victorino or Member Johnson, are you able to respond to Staff?

COUNCILMEMBER VICTORINO: No, that that, my, the alternative, no, they cannot use Maui County water. No. I mean as far as our sources. I mean that's never been the intention of any of this.

COUNCILMEMBER JOHNSON: Oh, well then . . .

COUNCILMEMBER VICTORINO: They're developing their own sources.

CHAIR MOLINA: So, Staff, where should that documentation or that clarification be made?

MS. NAKATA: I guess I'm just confused by the reference to water from sources of the County of Maui.

CHAIR MOLINA: Okay. You're, you're thinking of like the Department of Water Supply, County of Maui.

COUNCILMEMBER JOHNSON: Yeah.

CHAIR MOLINA: So, Mr., Mr. Hopper.

MR. HOPPER: Yeah, I would agree with Staff. The way it reads it just says --

CHAIR MOLINA: It may mislead.

MR. HOPPER: --"comply with the ordinances that pertain to those --

COUNCILMEMBER VICTORINO: Supplies . . .

MR. HOPPER: --from sources of the County of Maui when such ordinances are enacted." Well, first there are ordinances on the books right now that govern what you do as far as water supply. Secondly, the, the new ordinances may, I don't know, but they may potentially, you know, I don't know if they require someone to provide a private water system. So, if the intent, intent is to, you know, require a private water system no matter what even if the ordinance would allow a public water system then that intention should probably be stated in the event that those ordinances would allow for a public system or a, you know, a use of public water sources in the

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event that those ordinances may allow for them. Because if you just say they're, they're going to comply with the ordinances I'm not sure to what extent those ordinances would differ from your condition, your, the condition you had originally proposed.

So, you know, once you put the language in, "in the alternative" that could, that would change up based on what the ordinance is. And, and if that's your intention that's fine because the theory would be if there's a new water ordinance that that should be the applicable ordinance. But if you wanted to get more specific into what type of water should be provided by this particular project then, then you should probably say that.

COUNCILMEMBER VICTORINO: So, what would you, if I may, Mr. Chair, --

CHAIR MOLINA: Go ahead, Mr. Victorino.

COUNCILMEMBER VICTORINO: --you know now that that's, you know, my intentions were to apply to all ordinance pertaining to supplies of water from sources in Maui County. 'Cause I don't care what you say that water is going to come from Maui County not from our Board of Water Supply, not from us but it's going to come from the ground. So, how would I word that to ensure that it would be pertaining to a private system that still takes water from the County of Maui.

MR. HOPPER: Right. Yeah. County of Maui, you just want to make sure County of Maui is not interpreted to be like our government.

COUNCILMEMBER VICTORINO: Right.

MR. HOPPER: It's not the County of Maui government, County of Maui geographically basically.

COUNCILMEMBER VICTORINO: Okay. Yeah.

MR. HOPPER: That, that but I'm, I'm not sure offhand right now. I just, I would agree with Staff in that currently the way it's worded it could be interpreted to mean the government so.

CHAIR MOLINA: Mr. Hopper, maybe instead of saying County of Maui just maybe saying Maui County 'cause --

COUNCILMEMBER JOHNSON: Or island.

COUNCILMEMBER VICTORINO: Island of Maui.

CHAIR MOLINA: --yeah or Island of Maui. You know, Members, let's take a real brief break and work on the language. Meeting in recess subject to the call of the Chair. . . .(gavel). . .

**RECESS: 11:06 a.m.**

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**RECONVENE: 11:15 a.m.**

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. When we last left off we were considering a matter from Member Victorino and Member Johnson related to Condition 1. At this point, the Chair would like to recognize Mr. Victorino, I believe, he had been working . . .(*change tape, Side 2B*). . . language related to Condition No. 1. Mr. Victorino.

COUNCILMEMBER VICTORINO: Yes, Mr. Chair. If I could have the Staff read the, the changes so that we can get it I think concurrent with what we were trying to do.

CHAIR MOLINA: Okay. And for the record we do have a motion on the floor as well. Staff?

MS. NAKATA: Yes. The revisions would be to the second paragraph to replace the phrase "in the alternative" with "in addition". It would be "In addition, Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with applicable water ordinances that pertain to the supply and transmission of water from the" and replace the word 'County' with 'Island', "Island of Maui when such ordinances are enacted."

CHAIR MOLINA: Okay. So, we're, we're substituting out County of Maui with Island of Maui. Staff, am I correct?

MS. NAKATA: Yes, that's correct.

CHAIR MOLINA: Okay. Mr. Victorino?

COUNCILMEMBER VICTORINO: And also just to make sure that we're taking out "in the alternative" and adding "in addition". So, that is another substanent [*sic*] change I want the Members to understand. I think this then makes it concurrent. It follows the pattern instead of being an alternative. So, I don't know if we have to make a formal motion to amend the amendment.

CHAIR MOLINA: I think, Members, do you want to incorporate this as a friendly amendment?

COUNCILMEMBER JOHNSON: Yes.

CHAIR MOLINA: Okay. All right.

COUNCILMEMBER VICTORINO: As a friendly amendment.

CHAIR MOLINA: If there are no objections.



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CHAIR MOLINA: 1:30.

COUNCILMEMBER VICTORINO: 1:30.

CHAIR MOLINA: All right. Thank you, Mr. Victorino. Member Johnson.

COUNCILMEMBER JOHNSON: I just wanted to clarify that once we return which conditions will we be focusing on?

CHAIR MOLINA: The Chair at this point there may be a consideration from, possibly Member Baisa and if at, if there's anything else we need to tighten up, the Chair will look at that as well. But we've made some progress this morning. So, we're, we're moving right along, Members, getting to that point of resolution eventually.

COUNCILMEMBER JOHNSON: Thank you.

CHAIR MOLINA: So, we'll take it as it comes so we may not have as long a day as anticipated. The Chair was looking at four, going up to 4 o'clock. So depending on what we have left we'll just go from there, Members. So, we will return at 1:30. This meeting is in recess until 1:30 right here in the Council Chambers. . . .(gavel). . .

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

**RECONVENE: 1:33 p.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. Members, it is 1:33. Thank you for joining us for the rest of the afternoon, Members. Again I do appreciate you taking the time out of your very busy schedule especially as we approach the holidays and all of your other commitments that you've set aside in order to be here to work. At this time, Members, we've received a consideration from Councilmember Baisa and it relates to Condition No. 16. So, at this point the Chair would like to yield the microphone to Member Baisa for this consideration.

COUNCILMEMBER BAISA: Thank you, Chair. This is a proposed revision to Condition No. 16. The topic is wastewater and it's on Page 10 of the 11/10/07 matrix. It says, "That Honua`ula Partners, LLC, its successors and permitted assigns, shall provide a sewage disposal analysis that has been reviewed," and what we have deleted is 'commented on' and inserted 'approved' "by the Department of Health, and the Department of Land and Natural Resources of the State, and the Departments of Environmental Management and Water Supply of the County prior to Phase II approval." The big change in that sentence of course is the deletion of "commented on" and the insertion of "approved". "The approved sewage disposal analysis, and again adding 'approved', along with reviews and comments shall be submitted to the Council for, and this is an insertion, 'information and review' deleting 'and project shall be subject to additional conditions or

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amendments by Council if warranted by sewage disposal analysis', and inserting after that "the Council may provide comments and recommendations to the Maui Planning Commission for its consideration during its review of the Phase II application. The Council shall submit its comments and recommendations to the Maui Planning Commission within 90 days upon receipt of the approved sewage disposal analysis."

The point here, Chair, is to try to put a timeline on this condition because as we all know time is money and we need to move these projects along and things can languish in Committees for a very long time. So, we wanted to insert a timeline in it.

CHAIR MOLINA: Okay.

COUNCILMEMBER BAISA: So that's essentially what we're proposing.

CHAIR MOLINA: All right. Thank you very much, Member Baisa. Committee Members, comments and questions on the proposal to add I guess delete and add language into this condition which I guess the basic premise for this condition is to give the Council should the sewage disposal analysis get to the Council to give the Council a time period as to make a recommendation. Because I believe as the condition is currently worded there's no time specificity. So it forces the Council to act in other words. 'Cause as we all know sometimes matters for whatever reasons get stuck in Committee or Council and, and I think this is something worthy of consideration, Member Baisa.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Although I, I wholeheartedly agree with much of what Ms. Baisa has brought forward I think I still would like to have one change in this, this condition and it would go straight down to after where it says on the, oh, way at the very bottom of the page four lines up, "the Council may provide comments". I, I believe that the Council shall provide comment 'cause I believe that in the original wording we had that "shall". And I, I prefer leaving something like that in because I don't like leaving something that should be done by us out. I agree with the timeframe. I agree with, you know, all the other aspects of this. It's a well-worded correction and, and improvement on what we have right now. But I'd like to have instead of "the Council may provide", "the Council shall provide comments and recommendations" because I think that's important.

CHAIR MOLINA: All right. Thank you, Mr. Victorino. Member Baisa, any comments?

COUNCILMEMBER BAISA: No. No objections. The "shall" is fine. I think the reason why the "may" is there is probably thinking about we may have comments and we may not have comments but we could still provide comments.

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CHAIR MOLINA: Okay.

COUNCILMEMBER BAISA: You know we are in support. We're okay. We agree.

CHAIR MOLINA: So, theoretically, the Council could just say we don't have any comments but at least we made a comment --

COUNCILMEMBER BAISA: That's right.

CHAIR MOLINA: --right, a response.

COUNCILMEMBER BAISA: But we shall do that. So, I'm fine with that.

CHAIR MOLINA: All right. Thank you. Anybody, anyone else for comments on this? Member Johnson?

COUNCILMEMBER JOHNSON: Yes. According to the Code, and this would be for Mr. Hopper, the Department of Health, and Department of Land and Natural Resources, Department of Environmental Management, and also our Department of Water Supply, they would be the approving authorities for any sewage disposal analysis plan?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: Are you talking about under this specific condition or on the, the existing law?

COUNCILMEMBER JOHNSON: Under the existing law.

MR. HOPPER: Well, let me find that section and read it real quick and I can --

COUNCILMEMBER JOHNSON: Okay.

MR. HOPPER: --get that information for you.

COUNCILMEMBER JOHNSON: Okay. And, and the only reason I'm asking, Mr. Chair, is because the reason that we inserted the condition in the first place is the items that we're supposed to be reviewing as a part of the completed application should already contain this. So, you know, to me because we will not actually be involved the way that this condition is worded now, we will not be involved in making certain that the sewage disposal analysis meets with the criteria and all of the requirements that would ordinarily be in place at the time of this application. We're giving that authority basically to entities that if they have the authority if there's a mechanism whereby they will approve it or if they just say, oh, we're not an approving agency because I know we got into this once before when we required something with Ocean Rec Activities Permits. I think it was, oh, gosh, it was an environmental review for some of our parks areas. And then Office of

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Environmental Quality Control came back to us and said, well, we don't review this. Sorry. So, where do you go? And so I just want to ask that question.

CHAIR MOLINA: Sure. That's a very reasonable request. Mr. Hopper?

MR. HOPPER: I, I, the, the, the portion of the application requirement states that one of the application requirements is a sewage disposal analysis, a description of a proposed method of sewage disposal, and comments if applicable from the Departments of Health, and Land and Natural Resources of the State, and the Departments of Public Works, and Environmental Management, and Water Supply. Actually, no one approves it. So, no one has to approve it in the Code as written. Again, this appears to be something that would come before for informational purposes that could allow you to decide on whether or not to approve the project or whether or not to add certain conditions onto the project. But no approval is necessary by anybody. Just comments and agencies could say we have no comment.

COUNCILMEMBER JOHNSON: Okay. So, so, in other words, by putting the language of approval in there it's not consistent with our, you know, law. Is that correct?

MR. HOPPER: It, it would, well, again, you would go run into the problem potentially if the agencies say we don't want to approve this but if the agencies are, are okay with approving them then, you know, that's, that's doing more than what the Code requires. My concern would be if, if an agency says no we're not in the business of approving and this is a required condition of zoning. It may be to the point where it's impossible for the developer to meet that condition if they have to get the approval and then the agency says no we're not going to approve this. This includes State agencies.

You know my only concern would be what if the agency says no and then the developer is left with basically having to amend the condition in order to comply or some sort of declaration that compliance with the condition is impossible. And, and, and I don't know if I'm just, you know, worrying excessively here but that's a concern that I would have since they don't normally approve in these situations.

COUNCILMEMBER JOHNSON: Well, and, and that's my only concern, Mr. Chair, is that when we're asking an agency who currently doesn't have the authority to approve and we're saying, well, we want you do what we can't do because the information isn't in front of us right now. That was kind of, you know, and I can't speak for Ms. Anderson but my understanding of the original condition was that when we receive the comments from the agencies who would be looking at this and looking at it with eyes that are, you know, coming from a very different perspective than ours, they would be making comments back to the Council saying, look this is our recommendation and as far as the conditions go it's not the developer that has to return to the Council it's the comments coming from the agency.

So, I kind of see the current condition as having a greater degree of I guess enforceability because we're the ones that basically are approving the zoning. We have the approval authority.

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So, I'm not really comfortable I guess asking agencies that don't have that authority now to do something in the same way that Office of Environmental Quality Control said what they did on another subject. So, I'm going to be supporting the language as it is right now only because we're the only ones that really have the authority to approve the zoning. It may be that they're going to make recommendations to say this is great and what's been proposed is fine and we don't have to amend anything. But if something based on their comment results in us having to further define what's going to be contained within that sewage disposal analysis or plan recommendation then the only time we're going to have that opportunity is at the time when we're going to be inserting that condition.

And I, I know Mr. Hopper has a problem with that basically because stuff shouldn't be returning to Council but, you know, if, if people want this to move forward and not have it be rejected outright because the information isn't in front of us then the next best thing is to allow that to basically take place after the fact and then have that information come back to us so that we can actually address it intelligently. So, I'll be supporting the original condition for those reasons. Thank you.

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

COUNCILMEMBER BAISA: Member, Chair Molina, and maybe I can ask Mr. Hopper, if we were to remove the word "approved" would that be okay?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: And, and, and have "commented on" --

COUNCILMEMBER BAISA: Yeah.

MR. HOPPER: --basically. Yeah, that's, that's in the existing Code right now.

COUNCILMEMBER BAISA: And throughout the proposed amendment just take out the word "approved" if there, if there's a concern about using it.

MR. HOPPER: I mean, yeah, if, if . . .

COUNCILMEMBER BAISA: The idea is there.

MR. HOPPER: Yeah, if, if you want comments from the, those departments they could either say comment or, or no comment. I wouldn't anticipate any problems with getting that approval. And they may just want to back up and say we're not going to approve these. I, I can't speak for them but I think "commented on" it's in your existing Code so I certainly wouldn't see any potential problems with that.

COUNCILMEMBER BAISA: Well, if we can agree to that then, you know, it's okay with me.

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CHAIR MOLINA: Okay. Thank you, Member Baisa. So, you're looking at proposing removing both words the "approved" . . .

COUNCILMEMBER BAISA: Three of 'em.

CHAIR MOLINA: Three of 'em. Let's see we have "approved by the Department of Health", and then the word "approved" before the word "sewage".

COUNCILMEMBER BAISA: And then the bottom.

COUNCILMEMBER JOHNSON: There's only two.

CHAIR MOLINA: And I'm trying to locate that third "approved". Where are we here?

COUNCILMEMBER BAISA: "90 days upon receipt of the sewage disposal analysis" instead of approved. Yeah.

CHAIR MOLINA: "Of the approved sewage". Okay. So, we delete the word "approved" prior to sewage disposal analysis. Members, are you clear on deleting, the proposal from Member Baisa to delete the three words "approved" on the various parts of the condition? And then taking out the word "approved" which comes before "by the Department of Health", and before "sewage disposal analysis", and in the last sentence or the underscored sentence before "sewage disposal analysis" prior, prior to the last three words. Mr. Hopper?

MR. HOPPER: And if you are going to keep in the 90 day period you'd probably want to have a trigger for that. Currently, it would be after receipt of the approved plan. There's not going to be an approved plan maybe 90 days from the receipt of all the comments from the agencies or something like that if you're going to have a 90-day time period.

COUNCILMEMBER BAISA: Mr. Hopper, that's really important. We were looking for that time period so there would be an incentive to move things along. So, I'm open to whatever words will trigger that and be appropriate, sir.

CHAIR MOLINA: Okay. Mr. Hopper, can you offer any type of language that could assist the Committee?

MR. HOPPER: Well that's, that's up to the Committee --

CHAIR MOLINA: Right.

MR. HOPPER: --but just to pick --

CHAIR MOLINA: Suggestions.

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MR. HOPPER: --pick a time period where the, the 90 days would begin such as upon receipt of comments from all of the agencies listed. You know once, once the last of the agencies provides their comments then the 90-day period could begin to run if you believe a 90-day period is appropriate.

COUNCILMEMBER BAISA: Thank you, Chair. That sounds good.

CHAIR MOLINA: Okay. And, and, Member Baisa, if you need a little more time that you'd like to incorporate that into the amendment the Chair will give you some time to work on that if, if you need to and you want to work with Staff as well.

COUNCILMEMBER BAISA: That might be a good idea.

CHAIR MOLINA: Okay. Thank you. Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Mahalo, Mr. Chairman. Yeah, looking at the Code under No. 15, which I think is the Code you're looking at, Mr. Hopper, 19.510. Is that where you are?

MR. HOPPER: Yes. I'm under subsection 14, I think. I have on mine anyway it's 15 is Solid Waste and 14 is Sewage Disposal. I hope this online one's not out of date.

COUNCILMEMBER MEDEIROS: Oh, I see. Okay.

MR. HOPPER: It begins "Sewage disposal analysis, a description of a proposed method of sewage disposal."

COUNCILMEMBER MEDEIROS: And that's under what section? I'm sorry.

MR. HOPPER: There's a lot of subsections.

COUNCILMEMBER MEDEIROS: Under chapter what?

MR. HOPPER: 19.510 --

COUNCILMEMBER MEDEIROS: Okay.

MR. HOPPER: --.010. I think it's subsection --

MS. NAKATA: D.14.

MR. HOPPER: --D, yeah, D.14. is what I have. And D.15. is Solid Waste Disposal.

COUNCILMEMBER MEDEIROS: Okay. D.14.

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MR. HOPPER: And I see 14 is Sewage Disposal.

COUNCILMEMBER MEDEIROS: Okay. Now, I see it also. Okay. What I was going to ask is as 14 reads it says, "Sewage disposal analysis, a description of a proposed method of sewage disposal and comments if applicable." What does if applicable mean?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: That's difficult to interpret here for me. I wasn't there when this was originally drafted. I'd have to look in the Committee Report but it is, it's a fairly open ended statement. And, and, and I'm not certain as to its exact interpretation right now. I think that generally if, you know, this involves only comments here, if applicable could be read to mean that if the agencies so choose to comment they will comment. If, if they don't then, and, and, and they say we have no comments then you wouldn't have comments from them. But if applicable was inserted by Council at some point in drafting this and in order to see what it intended, I'd, I'd want to look at the, at the Committee Report. Just because of my, my lack of experience in dealing with these, you know, so but the Committee has discretion I think in determining whether or not it's received sufficient comments, if it needs to receive comments. And the, you know, it doesn't say exactly what needs to be in the sewage disposal analysis so if you're dissatisfied with the current analysis you can request more information. So, "if applicable" may also be read to be at the Council's discretion. You know if Council believes that it's appropriate for this particular project. But it's not particularly clear from the language that I'm reading right now.

COUNCILMEMBER MEDEIROS: Okay. Thank you, Mr. Hopper. Then my second question is on Member Baisa's proposal and her explanation of the 90 days, within the Code when the, this sewage disposal analysis is submitted for review by the Department of Health, the Department of Land and Natural Resources of the State, the Departments of Environmental Management and Water Supply of the County, under the Code do they have a time limit or a time schedule to review and provide comments?

MR. HOPPER: Not that I see in this particular section and that could be a problem because with SHPD we've seen it's taken a while, you know, maybe I know there's allegations both ways but it, it appears that there's been some time for them to comment on their plans. And, and their I know in certain situations they have time periods in their Administrative Rules that says if they don't comment within a certain amount of time it's deemed approved.

COUNCILMEMBER MEDEIROS: Right.

MR. HOPPER: I'm not sure if that applies to this application but right now I don't see a time requirement for those agencies to comment. I'm not sure if we'd even, Public Works and Water we may have a bit more discretion over since they're County Departments versus the State. But it is, that's a good point it, it could be difficult to require the State to respond within a certain

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amount of time. I would think you could at least get a letter saying we have no comments but I'm, I'm not certain about that.

COUNCILMEMBER MEDEIROS: Thank you, Mr. Hopper. Mr. Chairman, yeah, that would be my concern. I think Member Baisa's proposal is a good one except that we have no control on when we're going to receive comments as Mr. Hopper has described. So that would just be my concern on, you know, when would we receive the review and the comments from these Departments. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Medeiros. I think you bring up a good issue as we can tell by other departments in the State how they have responded and it's basically almost like a crapshoot. I mean you, you, you get it, you get it. If you don't, you don't. Member Baisa?

COUNCILMEMBER BAISA: Mr. Chair, because of that very problem in not being able to ask other people to do things within a period of time maybe it's imperative that we try to have a time limit when we get it. So that at least we can move things along. It may have been a year by the time we get it so we don't want it dragging along for a lot longer. So, I think it's imperative that we try to set some kind of limit on what we can control.

CHAIR MOLINA: Sure. I think it's only reasonable that, you know, if the State is not, they're not going to impose time limits on themselves well at least the County we can do something and offer to, you know, expedite matters. Members, any-oh, sorry, go ahead, Mr. Medeiros.

COUNCILMEMBER MEDEIROS: Yes. Just to follow up on Member Baisa's comments. I agree with her that I think her proposal for 90 days to move this along is, is I think an important part of her proposal and I agree with that. They, the concern as I said was going to be when we receive the comments to move along. Mahalo, Mr. Chairman.

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

COUNCILMEMBER BAISA: One last thing I wanted to say about this 90 days is, you know, in suggesting 90 days I was thinking about our 201(h) where we have 45 days and we feel really pushed. So we figured double that was, you know, at least doable.

CHAIR MOLINA: Thank you. Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chairman. Yeah, I can live with the 90 days, you know, if we have comments or not. I'm, I'm glad Member Victorino, you know, saw that word "may". "Shall" will tell us, you know, that somebody got to respond. That somebody is something that may be, may be a question because once we get the analysis, you know, who's going to respond, what Committee is going to respond? So I leave that. My question to Corporation Counsel is that the way I understand it the sewer, sewage disposal analysis is approved by the Department of Health --

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CHAIR MOLINA: Mr. Hopper.

VICE-CHAIR PONTANILLA: --and nobody else?

MR. HOPPER: Well, it's, it's commented on. It doesn't have . . .

VICE-CHAIR PONTANILLA: It doesn't say approved?

MR. HOPPER: This one doesn't unless there's a separate requirement the developer has to meet. This Change in Zoning requirement does not say approved. It says comments if applicable from those agencies not approval from them. I'm not sure if it has to have its disposal analysis approved due to other regulations such as Department of Health regulations. I'm, I'm not an expert in that area but currently it just says the analysis will be provided and comments if applicable from the Department of Health and then the other departments.

VICE-CHAIR PONTANILLA: Yeah. 'Cause I just looked at one of the sections here and it says comply with the Department of Health regulations.

MR. HOPPER: Okay. They may, you know, I imagine they would have to comply with all Department of Health regulations. And if part of those regulations include the disposal then, then perhaps but like I said I'm just not an expert and I'm reading the Change in Zoning law right now. And even if that language is from the Change in Zoning law it's talking about complying with their regulations. I'm not sure if they have regulations as far as disposal analysis is concerned. Maybe the applicant could provide more information on that.

VICE-CHAIR PONTANILLA: Yeah, maybe. Too bad Planning is not here.

CHAIR MOLINA: Yeah.

VICE-CHAIR PONTANILLA: Maybe Mr. Jencks can answer that?

CHAIR MOLINA: Yeah. I, I, I believe the Planning representative will be a little bit later today. She had an appointment. But we'll see if maybe you can get that question answered too by the Department. Mr. Jencks, we have a request from Mr. Pontanilla.

MR. JENCKS: Thank you, Mr. Chair. I was listening to the, to the question and the discussion, I can assure you what happens in this type of application even with a small septic system is that the Department of Health, you submit your application to the Department of Health, and the Department of Health will comment on that, send you back their comments. And then it's your responsibility to respond to those comments and change the plan, even with the sewer system that we're proposing here, our treatment plant. In the end, at the end of the day the Department of Health, the Clean Water Branch, will approve, approve this system. Without their approval I do not go forward but there will be a lot of comments. My initial submittal will then result in comments coming back and those are the comments you're going to see and then once it's, it's an

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iterative process, you comment, I go back. We go back and forth. And in the end the Department of Health approves this process.

VICE-CHAIR PONTANILLA: Thank you for clarifying that. That was my concern that somebody gotta, some department got to approve it.

MR. JENCKS: Believe me it's, it's a very rigorous process and they have the final say.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Pontanilla. Members, any other questions for the applicant? Okay. Seeing none. Member Johnson?

COUNCILMEMBER JOHNSON: And, and this again goes back to, oops, excuse me, per Mr. Hopper No. 14 again. And, and I'm just reading this, Members, from, it says the documents, this is in the application itself and it says, documents to be provided, they shall be provided as follows. And so, when you look at No. 14 is, this is "it shall be provided a sewage disposal analysis, a description of a proposed method of sewage disposal and comments from the Departments of Health and Land and Natural Resources of the State, and the Departments of Public Works and Environmental Management, and Water Supply".

Well, I understand the purpose of this and I even understand the purpose of Member Anderson trying to move this forward but my concern is that if this is what's required for review in the application and procedure which is where we're at right now and it's not here, how does it come back to the Council so that we can actually include if it's required conditions based on the comments by the Department of Health and Land and Natural Resources? Because it doesn't appear that there's anything in this part of the plan that says at this point we hand off this responsibility. There's no legal mechanism to handoff the responsibility to the Planning Commission. And even in what, you know, is proposed I know even Member Anderson's condition that she had drafted doesn't meet this criteria but at least it brings it back before the Council. So, I guess my, my main concern is that there's no mechanism that I can see. And correct me if I'm wrong, Mr. Hopper, you know, is there anything contained within that that we can just assign this responsibility to the Planning Commission?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: Well, I, I did, I think, state the first time we reviewed this that I thought if, if the premise was that there's an inadequate sewage disposal analysis, and I wasn't saying that there was but if that's the premise then the appropriate thing would be to get the analysis that you believe is required by your Code . . . (*change tape, Side 3A*). . . now rather than later on because that's what the Code contemplates is that you'll have the information, you'll do conditions or not do conditions and in fact use that information to decide whether or not you need to approve the application. I don't think it's a coincidence that the application requirements match up, the

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information that has to be provided in the application matches up quite closely with the, the showing necessary in order to allow the Council to grant the Change in Zoning.

There needs to be I think for example a showing that there's no adverse effect on sewage disposal or water sources or things like that, all of which match up with what has to be provided in the application. So, I, I mean I would recommend that if, if the premise is there's an inadequate analysis or that the, the analysis provided was incomplete then the Code contemplates you getting that information prior to granting a Phase I approval. That's not to say that you couldn't amend conditions after approved. Because the County Council does have the ability to initiate its own changes in zoning which I believe does include changes to conditions by Council initiated proceedings. However that, those would have to go through the Planning Commission again as would any amendment to conditions once Phase I approval is granted. Again another reason to decide on the conditions now rather than have to start the process all over again is my recommendation.

As far as providing comments to the Planning Commission, I don't see anything that would prevent you from doing that. Of course the Planning Commission has Phase II approval and they could, they could agree/disagree with your comments, they could disregard your comments if they wanted to. So, and, and it, it appears I don't know if the intention is to prevent them from acting on the Phase II approval until they receive the comments, which I believe would be possible. But again if this, you know, the, the Project District zoning has a process that it's, it's, it's supposed to flow in a certain way and this would change it in, you know, change the way it, it goes. I'm not saying that's not permitted but if, if there is a way to make it as clean as possible to make it as compliant with the Code right now as possible I'd recommend that you go that route.

COUNCILMEMBER JOHNSON: Uh-huh. And then ordinarily at Phase II approval which goes before the Planning Commission under, this would be 19.45.050.B it, it says, that unless otherwise provided in the Project District Ordinance after Phase I approval the applicant shall submit to the Planning Director, and then this is one of the things, proposals for drainage, streets, parking, utilities, grading, landscaping, architectural design concepts, guidelines, building elevations, building sections, construction phasing, open space land use, and signage. So, under the Phase II approval it is possible for the Planning Commission then to insert conditions into this that would be able to address the sewage disposal issues?

MR. HOPPER: I believe the Commission does have the authority to condition their Phase II approval. I, I would like to consult with Planning on that because they presided over far more Phase II approvals than I have but I have dealt with Phase II approval conditions before so I know there, there are conditions. If I could dig through the ordinance here a bit more maybe I could see where that agreement is. But, yeah, I've certainly seen Phase II approvals on, or conditions on Phase II approvals acted on by the Planning Commission.

COUNCILMEMBER JOHNSON: Yeah, and --

MR. HOPPER: I have seen that.

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COUNCILMEMBER JOHNSON: --and my only concern there is that in B.1.a. it just simply says utilities. So, it says, drainage, streets, parking, grading, you know, those to me are not like sewage disposal, you know, those are big things to me. Utilities might be are you going to underground your utilities? Are you going to have streetlights? You know that's the way I'm looking at it. But I really would like clarification on that before I'm prepared to vote on anything. Because to me, Mr. Chair, the, the whole philosophy is that we're supposed to have it because we're the ones that will put in conditions and then those would be duly recorded in the Unilateral Agreement. So that's what's going to run with the land. To now say that we're going to change that because we don't have the information and it's just like to me anyway it's passing on that opportunity. And the reason that we have to pass on the opportunity is 'cause we don't have it here and we don't have the comments because we don't know what's going to go in.

So, while I might not have agreed even with the original premise of Ms. Anderson's thing which is allowing the project to proceed but coming back to us later on if comments were made that look you can't put injection wells you have to do some other mechanism. We're not going to get that opportunity. It will not pass this way again and to just make comment I mean we can make all the comments, we can draft all the resolutions we want. I mean if the State doesn't listen to us what makes the Planning Commission or what makes us think the Planning Commission will necessarily agree to what it is that we want. So that's my main concern, Mr. Chair, and unless I'm convinced that this is the right thing to do and I'm willing to abdicate that responsibility which rests with us right now to another entity, and there doesn't even appear to be a mechanism for us to do that legally, I just, I just can't support this. I have trouble supporting the other one. So this one's even worse because now it's, it's, nobody is approving it essentially. Thank you.

CHAIR MOLINA: Okay. Thank you for your comments, Member Johnson. Member Baisa, would, you had considered some additional language or you needed some time to work with Staff or are you satisfied with what you had already proposed?

COUNCILMEMBER BAISA: We were going to try and get some language for the, for the time thing.

CHAIR MOLINA: Uh-huh. Okay. So, would you like a brief recess then to work with Staff?

COUNCILMEMBER BAISA: Yes, please.

CHAIR MOLINA: Okay. Members, we'll take a recess subject to the call of the Chair.

COUNCILMEMBER BAISA: Thank you.

CHAIR MOLINA: Meeting in recess. . . .(*gavel*). . .

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

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

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CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. Members, during the break we had Member Baisa work with Staff to deal with language for Condition No. 16. At this point I'd like to yield the floor to Member Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. Let me read the revised proposal here. Condition No. 16, "That Honua`ula Partners, LLC, its successors and permitted assigns, shall provide a sewage disposal analysis that has been reviewed and commented on by the State Department of Health, and the State Department of Land and Natural Resources, and the County Department of Environmental Management, and the County Department of Water Supply as part of the Project District Phase II application. The sewage disposal analysis along with reviews and comments shall be submitted to the Council for information and review. Within 90 days of receipt of comments on the sewage disposal analysis from all commenting agencies, the Council shall provide comments and recommendations to the Maui Planning Commission for its consideration during its review of the Phase II application."

CHAIR MOLINA: Okay. Thank you, Member Baisa. Members, comments on the revised I guess amendment if we'd like to call it that for Condition 16? Member Johnson?

COUNCILMEMBER JOHNSON: You know and, and this just a, you know, an English thing --

COUNCILMEMBER BAISA: Go ahead.

COUNCILMEMBER JOHNSON: --because the Council shall provide comments and recommendations. And it's unclear because it says if you skip recommendations to Maui Planning Commission and then you could interpret it to say, for its consideration during its review of Phase II application. So it's unclear because of the way that it's placed whether it's the Council that's reviewing the Phase II application or the Maui Planning Commission. So, you would need to put in "during the Commissions review of the Phase II application" to make it absolutely clear.

CHAIR MOLINA: Okay. Can you offer us a suggestion on the wording?

COUNCILMEMBER JOHNSON: Just say, recommendations to the Maui Planning Commission for the Commissions or, or for its consideration during the Commissions review of the Phase II application.

CHAIR MOLINA: Okay. During the Commissions, so --

COUNCILMEMBER JOHNSON: Yeah.

CHAIR MOLINA: --strike out the word "its".

COUNCILMEMBER JOHNSON: Yeah.

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CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: Because it's, it's just not, I know what it is and --

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: --probably everybody else does but --

CHAIR MOLINA: It has more clarity.

COUNCILMEMBER JOHNSON: --if somebody looks at it then they're going to know whose doing what.

CHAIR MOLINA: Okay. Member Baisa?

COUNCILMEMBER BAISA: No problem as long as it's clear to everyone. You know, it's clear to us right now but who knows who's going to look at this a year from now.

CHAIR MOLINA: Okay. Thank you, Member Baisa. Members, additional comments before the Chair offers his, a recommendation?

COUNCILMEMBER VICTORINO: Recommendation.

CHAIR MOLINA: Okay. The Chair will support Member Baisa's proposal and will entertain a motion.

COUNCILMEMBER BAISA: So moved, Chair, to --

COUNCILMEMBER VICTORINO: Second.

COUNCILMEMBER BAISA: --to approve.

CHAIR MOLINA: Okay. Moved by Member Baisa, seconded by Mr. Victorino. Member Baisa, additional discussion on the motion?

COUNCILMEMBER BAISA: No, sir. Thank you.

CHAIR MOLINA: Any other discussion?

MS. NAKATA: And, Mr. Chair, this would be to substitute the existing Condition 16 with the language that Member Baisa just passed out?

CHAIR MOLINA: Member Baisa, is that correct?

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COUNCILMEMBER BAISA: Yes.

CHAIR MOLINA: Okay. Yes. Yes, Staff. Okay. Seeing no other discussion. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed?

COUNCILMEMBER JOHNSON: No.

CHAIR MOLINA: Okay. We have one, two, three, four ayes; one no. So the motion fails.

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

**NOES:           Councilmember Johnson.**

**EXC.:           Councilmembers Anderson, Hokama, Mateo, and Medeiros.**

**ABSENT:       None.**

**ABSTAIN:      None.**

**MOTION FAILED**

CHAIR MOLINA: So we have, we have a four to one. At this point, the Chair could call it by majority consensus since we had, the motion did not, you know, go over with the five, five votes needed. Staff, any . . . I guess we could call it consensus, majority consensus if that is appropriate.

MS. NAKATA: I think we did the existing Condition 16 by vote earlier on a motion to amend.

CHAIR MOLINA: Okay. So this would be, so the amendment did not get the necessary five votes to pass. So at this point Condition 16 is back to its original, original form then?

MS. NAKATA: That's correct, Mr. Chair.

CHAIR MOLINA: Okay. So the motion to amend fails at this point. So it has to be left as is even though it was a four to one. So there's no consensus. Okay. Members, that's the way it goes so we'll leave it at that.

COUNCILMEMBER JOHNSON: Sorry.

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CHAIR MOLINA: Okay. All right. We shall move on. Member Johnson?

COUNCILMEMBER JOHNSON: Mr. Chair, and, and if the Members feel strongly about this it can certainly be revisited at another time --

CHAIR MOLINA: Sure.

COUNCILMEMBER JOHNSON: --when other Members are here that are comfortable with it. I'm just not comfortable.

CHAIR MOLINA: Okay. Totally understood, Member Johnson. All right. Members, let us move on to our matrix Pages 18 and 19. There's one more consideration I'd like to have discussed for today and this is from the applicant. I believe we did not get an opportunity to have it discussed. We may have but the Chair can't recall. There's been so much going on. Page, it was Page 18 and 19 having to do with 18 acres set aside as a Conservation Easement for a Botanical Habitat. Let me ask the applicant to come up and give us a brief synopsis of this proposal that you're offering the Committee to consider. Mr. Jencks?

MR. JENCKS: Yes, Mr. Chair. The question is that is this proposal still on the table?

CHAIR MOLINA: Well, we're, the, the Chair at this point is open to --

COUNCILMEMBER BAISA: Everything is on the table.

CHAIR MOLINA: --hearing your . . .

MR. JENCKS: Yeah, yeah, I guess . . . *(inaudible)* . . .

CHAIR MOLINA: If you're offering.

MR. JENCKS: Well, we had a discussion the other day about the issue of botanical resources and the Committee voted on and approved a condition addressing botanical resources which was the one that provided for us transmitting Mr. Altenberg's report to governing agencies. So if you're thinking that you would like to revise that condition and put this one in is that what is on your mind or . . .

CHAIR MOLINA: Well, my understanding is we, we don't have any Botanical Habitat Preserve set aside at this point, right? We have zero. This is an offer of 18 acres. So . . .

MR. JENCKS: I, I think the result of the condition that you approved would be using the stakeholders to define the amount of botanical reserve set aside.

CHAIR MOLINA: Okay.

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MR. JENCKS: This proposal defined 18 acres with a Conservation Easement --

CHAIR MOLINA: Okay.

MR. JENCKS: --and an additional 23 acres for, for a habitat enrichment area.

CHAIR MOLINA: Okay. This is what the Chair wanted some clarity on because I know you had submitted it and we never had a formal discussion on it. But basically what we did already with the other condition would then in essence make this moot.

MR. JENCKS: Right.

CHAIR MOLINA: Okay. Thank you. All right. Members, so that will take care of that. So it is 2:30, Members, the Chair is going to request-Member Johnson, do you have . . .

COUNCILMEMBER JOHNSON: No. I was just going to, just propose, what I was going to propose --

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: --if, you know, and, and I'm not going to obviously read all of the things that were contained in Mr. Jencks original submittal but because the Members don't have this in the matrix and this is the wording that we actually adopted with the botanical portion. And I'll just put it into the record "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 a 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 Engineers 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."

And the only thing that I would propose adding in would be "such plan shall in, shall contain a minimum preservation standard as follows". Put in Mr. Jencks' wording because that would be at the very least it would contain that. If they have something more that they want to add this wouldn't preclude that but add that in. And then also attach the map that he has provided us as an exhibit. So that would be my intent to just take what we already approved just insert "such plan shall include a minimum preservation standard as follows".

CHAIR MOLINA: Okay. Tell you what, Member Johnson, Members, would you like that in writing? We can have Staff work with Member Johnson to put it in writing.

COUNCILMEMBER VICTORINO: Yeah. I think I think it's important we get something in writing --

CHAIR MOLINA: Okay.

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COUNCILMEMBER VICTORINO: --so we understand what we're trying to do here.

CHAIR MOLINA: Okay. Very good. We'll, the Chair will call for a recess. Member Johnson can work with Staff and then we can consider your matter. Meeting in recess subject to the call of the Chair. . . .(gavel). . .

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

**RECONVENE: 2:39 p.m.**

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. Members, we have a consideration on the floor from Member Johnson. Member Johnson, you have the floor to --

COUNCILMEMBER JOHNSON: Yes. Mr. Chair.

CHAIR MOLINA: --what you had worked on with Staff on this language.

COUNCILMEMBER JOHNSON: Yes. I want to thank, Staff, for helping. And the Members should have the language in front of them. But the condition would now read, and, and this is, most of it has already been included but I'll read it anyway. "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 a 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 Engineers 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. Such plan shall include a minimum preservation standard as follows", and then that's where we refer back to the Botanical Habitat Preserve language, which I won't go into. We have it on the matrix already and the attached exhibit, which is also a part of our matrix.

CHAIR MOLINA: Okay. Members, any comments on Member Johnson's proposal?

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Well, you know, I, I think we've gotten to a point where this pretty much addresses all the concerns on all parties. And I think the developer has brought forth saying that he was willing to do this minimum plan if nothing else, if we found nothing. But if we do, then he would take even further action. So, I think that gives us the opportunity to review this and make comments. And I think we have the necessary expertise that's needed to do this. So, I would gladly second the motion if that's Ms. Johnson's motion.

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COUNCILMEMBER JOHNSON: Yes. So moved.

COUNCILMEMBER VICTORINO: And I'll second it so that we can I think put this on the table and get it taken care of. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Member Johnson, are you prepared to make the motion?

COUNCILMEMBER JOHNSON: Yes. So moved.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: So, I'll second it.

CHAIR MOLINA: Okay. Thank you. The motion has been made by Member Johnson for this. Now, this is a separate condition or an attachment to the existing condition that's, that we already have?

COUNCILMEMBER JOHNSON: Basically, I already read the condition that we already had adopted previously and all this would be, would just be adding the language of "such plan shall include a minimum preservation standard as follows" which would be then incorporating Mr. Jencks' language and attaching the exhibit. So that at least we're assured that whatever goes forward there would be a minimum preservation. And I think that was I can't speak for Ms. Anderson but I think that was part of my concern too is that we want to know that something is going to be preserved even if it might not be to our individual satisfaction. That if he was willing to do this, which was expanded from his original submittal then I think at the very least, you know, this is something that could be supported. And it may end up that it is going to be this plan entirely but I feel that it's important to just get it on the record. Thank you.

CHAIR MOLINA: Sure.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Would it be appropriate to ask the, to ask Mr. Jencks to come down and comment on what we've just put forth? I, I, we've done it in the past so I was just --

CHAIR MOLINA: Sure. No . . .

COUNCILMEMBER VICTORINO: --asking if it's okay with you first.

CHAIR MOLINA: The Chair has no problems, if there are no objections.

COUNCIL MEMBERS: No objections.

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CHAIR MOLINA: Mr. Jencks, can you respond to Mr. Victorino's inquiry?

MR. JENCKS: Sure. But what do you need to know?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: No. I know you're tired, Charlie. Realistically . . .

MR. JENCKS: Not as tired as you guys.

COUNCILMEMBER VICTORINO: Realistically, I mean what you heard presented are you comfortable with that? Because again part, a lot of, a big part of it is what you originally proposed.

MR. JENCKS: In all honesty the project term [*sic*] team worked really hard on this proposal. We really didn't discuss it. We did a little bit of discussion on the proposal but then we focused on, on Ms. Anderson's proposal. And we wouldn't have put it on the table unless we didn't think it was a good plan that would provide what is really needed and is appropriate for this area given the resources out there. So we support that.

COUNCILMEMBER VICTORINO: Okay. Thank you. That answers my question. Thank you, Mr. Chair.

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

COUNCILMEMBER BAISA: Thank you, Chair. Where on this list of a, b, c, d, whatever, does this go? Where is it going to be inserted?

COUNCILMEMBER VICTORINO: Page . . .

CHAIR MOLINA: Member Johnson?

COUNCILMEMBER JOHNSON: I guess I would refer to Staff but this is the Botanical Preserve condition.

COUNCILMEMBER BAISA: Uh-huh.

COUNCILMEMBER JOHNSON: So, I guess it would be . . .

COUNCILMEMBER BAISA: There's a number of a, b, c, d.

CHAIR MOLINA: Staff?

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COUNCILMEMBER JOHNSON: I think we'll probably have to renumber it at some point. Is that correct, Staff?

MS. NAKATA: There's no number for the condition currently.

COUNCILMEMBER JOHNSON: Yeah.

CHAIR MOLINA: Yeah.

MS. NAKATA: Are you asking where the Botanical Preserve language would go?

COUNCILMEMBER VICTORINO: 18, huh?

MS. NAKATA: So, at the end of the current condition Member Johnson is suggesting adding on language "Such plan shall include a minimum preservation standard as follows" and then the whole of that Botanical Preservation condition starting with, "That Honua`ula Partners, LLC, shall establish in perpetuity, (1) an 18-acre Conservation Easement", and so on would be, would follow . . .

CHAIR MOLINA: And, Member Baisa, we don't have an updated matrix to reflect that condition so I think that's why it's . . .

COUNCILMEMBER BAISA: That's, that's probably why I can't follow. Okay.

CHAIR MOLINA: Yeah. So, we will try to get an updated matrix as soon as we can. Member Johnson, anything else?

COUNCILMEMBER JOHNSON: Yes. And, and I know that it's confusing because even when I was looking to where we could reconsider the condition I couldn't find the condition. So, I understand Member Baisa's concern. And I think because this will be a separate numbered condition Staff when they redo that will include it. But I, I just, you know, I hope that the Members support it because either all of us agree or it won't pass. Thank you.

CHAIR MOLINA: All right. Okay. Thank you. Members, any other considerations before the Chair calls for the vote on this condition or, or addition to the condition from Member Johnson? Okay. Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed. Okay. We have five votes. Five-zero with four excusals - Mateo, Anderson, Medeiros, and Hokama.

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

**NOES:**       **None.**

**EXC.:**       **Councilmembers Anderson, Hokama, Mateo, and Medeiros.**

**ABSENT:**   **None.**

**ABSTAIN:**   **None.**

**MOTION CARRIED**

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

CHAIR MOLINA: All right. Members, it is 2:45, Members. The Chair is going to call for a recess to consult with Staff and give you guys a short break. I need to go over a couple of more things. And ask you as a matter of fact I'd like you all to go look at your calendars about the possibility of a recess or if it is the intent of the Committee to act on this today, if not, we may have to look a recess day later this week either Tuesday or Wednesday. But I'd like you to mull that over for this recess and when we come back we'll have more discussion on that. This meeting is in recess until 3:00 p.m. . . .(*gavel*). . .

**RECESS:**   **2:47 p.m.**

**RECONVENE:**   **3:15 p.m.**

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18<sup>th</sup> is now back in session. Thank you, Members, for that extended recess to give the Chair the opportunity to consult with Staff with regards to what we have left. But before we do that, the Chair is looking at a recess date coming back I don't believe we'll be able to get to a vote today. There's a few things that the Chair would like to tighten up, tighten things up on as it relates to the matrix. First of all, the Chair would like to get you an updated matrix to you. The Chair is looking at tomorrow at 2:30. I would like to ask for your feedback on that, Members, if that is a time that most, if not all of you can join us in these Chambers for tomorrow. Member Baisa?

COUNCILMEMBER BAISA: I can do 2:30 tomorrow, Chair.

CHAIR MOLINA: All right. Thank you.

COUNCILMEMBER BAISA: And how long do you think we're going to be here?

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CHAIR MOLINA: Well, as long as we have quorum but I'm looking at a minimum of maybe two hours possibly maybe less give or take.

COUNCILMEMBER BAISA: My problem is I need to be in Lahaina at 5:15.

CHAIR MOLINA: Okay.

COUNCILMEMBER BAISA: And that's an hour to get out there. So it may not work.

CHAIR MOLINA: Well, we'll see how far we can get till tomorrow so.

COUNCILMEMBER BAISA: I don't know where the rest of everybody else is.

CHAIR MOLINA: Yeah.

COUNCILMEMBER BAISA: So let's kind of think about it.

CHAIR MOLINA: We'll go down line.

COUNCILMEMBER BAISA: It's not my first choice.

CHAIR MOLINA: Yeah. Okay. Thank you. Member Johnson?

COUNCILMEMBER JOHNSON: And it would not be my first choice either because Wednesday is better but I can clear my calendar. I would have to leave here certainly by 4:30 at the latest.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Mr. Pontanilla, 2:30 tomorrow?

VICE-CHAIR PONTANILLA: 2:30 is fine.

CHAIR MOLINA: Okay. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah, Mr. Chair, 2:30 will be fine. I've already given up my plans for tomorrow already but I do have a family commitment. My son will be leaving and so we have a 5:30 commitment.

CHAIR MOLINA: Sure.

COUNCILMEMBER VICTORINO: But I will stay till, till then or till we lose quorum. But, you know, Mr. Chair, I hope we also checking with the other Members because, yes, I know Member Anderson had an, an emergency and she's not going to be with us till the first but the rest of the Members what are their schedules? I know Mr. Medeiros not going to be back I think tomorrow because he's still going to be in Hana. He has a family funeral or something like that. So, I'm

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not sure on his. You know I'm not trying to speak for others but I, I hope you're, you're going to be able to check with them --

CHAIR MOLINA: Oh, the Chair --

COUNCILMEMBER VICTORINO: --because that's so important.

CHAIR MOLINA: --the Chair always does. Yeah. Make sure we, we --

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: --get input from everybody. So, we will see. The whole premise for this is to, just to get quorum to have a meeting. And again it's going to be up, a body's decision if we take action or not depending how much people we have to go with. So, but we'll cross that bridge when we get to it. And, you know, Staff has been checking with all of the other offices as well. So, but at this point for five Members anyway in these Chambers 2:30 is the tentative recess date. So, well we got that out of way for now. I've been told that, Members, if you look at your matrix, the Chair would like to just tighten up a few things. Condition No. 9.

COUNCILMEMBER VICTORINO: Page?

COUNCILMEMBER JOHNSON: What Page?

CHAIR MOLINA: Excuse me. Page 9. Excuse me. Page 9 of your matrix related to the Cultural Plan that was submitted by the applicant. And I stress the applicant. This is not a Maui Planning condition, Planning Commission condition. What direction the body would like to go with this, is this something we want to keep or consider? If you look at the third column on Page 9 it's listed as the applicant's Condition 11. The Cultural Plan was listed as 13 by the Maui County Cultural Resources Commission. So, we had talked I guess at one of our prior meetings about considering the applicant's version of it. Members, any comments? Do you want to keep this? Do you want to enhance it or do you want to just leave it out? Member Johnson?

COUNCILMEMBER JOHNSON: What, what is the condition currently? 'Cause I know we, we changed it. So, if Staff could just read what the --

CHAIR MOLINA: Sure.

COUNCILMEMBER JOHNSON: --old one or the, what the one is --

COUNCILMEMBER VICTORINO: The current one.

COUNCILMEMBER JOHNSON: --that we currently have in.

CHAIR MOLINA: Staff?

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MS. NAKATA: It's in the Members matrix on Page 9, column three. We're looking at the applicant's version submitted on October 31<sup>st</sup>. "The Cultural Resources Preservation Plan (CRPP) being prepared by Honua`ula Partners, LLC, its successors and permitted assigns, shall be completed in consultation with Na Kupuna `O Maui, the CRC and OHA and approved by SHPD. The approved CRPP shall be submitted as part of the Phase II application.

The CRPP shall primarily address items pertinent to preservation, including:

- i) Access to specified sites;
- ii) Appropriate protocol for visitations; and
- iii) Manner and methods of preservation."

CHAIR MOLINA: Member Johnson?

COUNCILMEMBER JOHNSON: And, and that's the one that, you know, the developer submitted. So, what we currently have, and correct me if I'm wrong, is "WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall provide a Preservation Mitigation Plan pursuant to HRS 6E that has been approved by State Historic Preservation Division office and the Office of Hawaiian Affairs of the State prior to Phase II approval." So, I guess the, the difference between this one and the other is that, well, we did take out, "the report shall be submitted to the Council for review and the project shall be subject to additional conditions by the Council if warranted by approved", you know, "warranted by recommendations made through the approved preservation/mitigation plan." That's the wording that we took out.

So, you know, for me, Mr. Chair, I, I understand the purpose of putting the groups down but then I think what we had done was the discussion if I recall that we had about the whole lengthy I guess process or the lengthy list, we didn't want to leave anyone out. So that was the reason why these were the two approval agencies but I don't think there's anything that would preclude the developer from working with all of these various groups. And I think the only thing that we don't have listed in there is the Cultural Resources Commission, and that might be good to add in. But I could ask . . . (*change tape, Side 3B*) . . . Resources Commission has no oversight or approval authority at the Phase II approval stage. Is that correct?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: I'm, I'm not familiar with any, and maybe Planning can correct me if I'm wrong, but I don't believe they would have the ability to, I don't think they're required a reviewing agency as part of Phase II approval unless a condition would specify that. I think that's correct.

CHAIR MOLINA: Director Suyama?

MS. SUYAMA: During the Project District Phase II approval it is the Maui Planning Commission that would be the approving authority. The Cultural Resources Commission could only be an advisory body. In other words, if the Maui Planning Commission or the Planning Department

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had requested them to review something like if there's a cultural plan or a preservation plan they would just be putting in comments and recommendations.

COUNCILMEMBER JOHNSON: Okay. Yeah. And, and, Mr. Chair, in, in light of that I think that, you know, for me I would like a little bit of time and I can try and rework some wording. I like some of the things that Mr. Jencks has included in there but also I think that we don't want to limit the participation. Because, you know, right now the way this is stated it's just done in completion with those entities and I want to say, yes, you can name those entities but it should not be limited to just those groups because there may be families that have kupuna that are, you know, attached or let's say that have a familiar link with that area. There may be other entities like Na Ala Hele. I don't know if they've done any research on traditional trails or anything of that sort. But I, I just, if we're going to revisit it, I'd, I'd like it to, you know, be something that, you know, at least just more than just a few of us have had an opportunity to look at it.

Because I don't want to change it and then find out that, oh, you know, you shouldn't put this in or you shouldn't put that in because as Member Victorino said earlier there's just a few of us. And because this was one I believe where we had taken an original vote on the Historic Preservation condition. I mean I, I actually liked it the way it was before because at least then if there were additional conditions that had to be added in we could at least do it at that point if it's, if it was to I guess instruct the applicant to amend the Unilateral Agreement. And I think, Ms. Suyama, you usually don't, the Planning Commission has no authority over the Unilateral Agreement. Is that correct?

MS. SUYAMA: Once the Change in Zoning is approved and the Unilateral Agreement is filed with the Change in Zoning, the Commission has no authority to amend that Unilateral Agreement. It will take the Council action through another Change in Zoning action to do that. There, there is one thing that I would, you know, point out to the, to the Council is that the way the, the condition is written now the approving body is the State Historic Preservation Division. While we had recommended that the Maui County Cultural Resources Commission be the approving body. And there is a reason why we had recommended the Commission is that because the Commission is a, is an open body, we have an, it's an agenda item and it allows the public to testify on the agenda item. When you have only a department reviewing it, it does not open it up to public testimony or to public review. And for that reason, you know, we would say that probably if you want the public to have the opportunity to review the cultural plan that it may be more appropriate for the Maui County Cultural Resources Commission to be the approving body.

COUNCILMEMBER JOHNSON: Okay. And so then the condition as its worded then where it says the I guess "been approved" what you would do is you would change that to say "has been approved by the Maui County Cultural Resources Commission in consultation with State Historic Preservation Division office and Office of Hawaiian Affairs prior to Phase II approval"?

MS. SUYAMA: That's correct.

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COUNCILMEMBER JOHNSON: Okay. I mean it's a little bit different take but I tend to agree with Ms. Suyama that that wording would give us at least that public process that people could go through. And if Cultural Resources Commission and even though they're not an approving body if we request that they approve this I, I think that, you know, I mean barring anything that is raised as a concern by Mr. Hopper, I, I would say that, that is fine with me as well.

CHAIR MOLINA: Okay. Thank you.

MS. NAKATA: Mr. Chair, if Staff could just clarify it. It may be a misunderstanding of Staff. When the Historic Preservation condition was recommended by this Committee on November 13<sup>th</sup>, Staff had understood was that intended to replace Planning Commission No. 13? Is that what Member Johnson is saying?

CHAIR MOLINA: Member Johnson?

COUNCILMEMBER JOHNSON: Well, if we're looking at No. 11 which is the Cultural Resources Preservation Plan that is also what's referred to in the Historic Preservation condition. So, I guess Staff would have to clarify for me do, we, we never adopted 11 therefore it's not in existence, so our Condition No. 13 I guess that's not listed either.

MS. NAKATA: Staff had the Planning Commission Condition No. 13 as not yet having been resolved as far as whether --

COUNCILMEMBER JOHNSON: Oh, okay.

MS. NAKATA: --the Committee would be making a recommendation that that be left in as is or --

COUNCILMEMBER JOHNSON: I see.

MS. NAKATA: --where we had left off the last time we had agreed I believe to work off the applicant's version of the condition. Staff also had noted that the Historic Preservation condition that was discussed on November 13<sup>th</sup> was to be a separate and new condition. Or was that understanding that if you're suggesting that this was to replace this cultural plan condition? Is that why you're raising it?

COUNCILMEMBER JOHNSON: Well, you know, for me one is the preservation/mitigation plan for the cultural sites which is required under HRS 6E and that would be prior to Phase II approval. The way I'm understanding No. 13 the permanent cultural plan in my view, and Ms. Suyama can correct me if I'm wrong, a permanent cultural plan would be a preservation/mitigation plan that is a cultural plan. But she is stating here that their recommendation is that it be approved by the CRC and also include access as well as I guess just be reviewed by State Historic Preservation office and Office of Hawaiian Affairs prior to Phase II approval. So, my understanding, Mr. Chair, is that on 13 we would be incorporating some of the language contained in that along

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with some of the language that's currently in the preservation/mitigation plan condition that we already voted on. So that's my understanding.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: And if there's two different ones, Ms. Suyama, are there two, is there a separate plan that you're referring to or this is the same?

MS. SUYAMA: The, the reason why we had originally placed this condition, you know, at the Planning Commission level is because we were told by the, the applicant that they were in the process of working with the community groups in establishing a cultural plan. We didn't know what the specifics of those cultural plan was going to be but it was primarily to ensure future access to native Hawaiian groups, you know, the public to some of these cultural sites as well as, you know, preserving some of these sites. Our Condition 13 is very general versus the applicant's Condition No. 11 is more specific as to what should be included in the cultural plan. So, you may want to consider the applicant's Condition 11 because it's more specific identifying what should be included.

COUNCILMEMBER JOHNSON: Okay. But in, in their condition it requires that it's completed in consultation with Na Kupuna `O Maui, Cultural Resources Commission, and OHA, and approved by State Historic Preservation Division, so it differs from yours.

MS. SUYAMA: Right. That's why we, you know, we caution that it may have been, it may be better for the Cultural Resources Commission to be the approving body versus the State Historic Preservation. And State Historic Preservation be the consulting agency to make a recommendation to the Cultural Resources Commission.

COUNCILMEMBER JOHNSON: Uh-huh.

MS. SUYAMA: The other preservation condition I think is more like, you know, there are sites that need to be preserved and it's basically saving those sites. I think this condition goes beyond that. That talks about more than just preserving the sites but providing access to the sites.

COUNCILMEMBER JOHNSON: And, and that, Mr. Chair, was the bone of contention because one of the things that we had dialogue about was where would the guarantee of access come in. So, I, I guess there's two different layers of concern and two different layers of approval. I agree with Ms. Suyama that I think they're all important but I, I, I don't know, I'm going to have to look at this a little bit more closely. And because we've already discussed this at length when we first came upon it, I just want to make sure that what we're putting in isn't cutting out or insulting any group or leaving anyone out unintentionally. Because I think that's not our, our goal and objective but that if there is additional input that can be gathered I think it's important that we allow that opportunity. So right now I, I, I can try on my own to work with Staff and come up with something that would incorporate all of those components. Thank you.

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CHAIR MOLINA: Okay. Thank you, Member Johnson.

COUNCILMEMBER VICTORINO: Mr. Chair.

CHAIR MOLINA: And we'll await on that. Mr. Victorino?

COUNCILMEMBER VICTORINO: Again, you know, when you confuse me, I get confused and I'm, I'm out in left field. I mean Ms. Johnson has gone right, left, back, forth. Ms. Suyama has gone right, left, back, forth. I have no idea. The public out there probably doesn't have any idea. Just as bad as I am. So, and if they do thank you public come see me so you can help me along, but, you know, you have this that we voted, which I voted no against but this is what we had voted on the other day on the 13<sup>th</sup>. Now, Ms. Johnson is saying this is to replace 13 of the matrix or 11, which is the next one over, which is, I didn't know we placed anything.

CHAIR MOLINA: Yeah. Okay. If, if I could back, back up a little bit.

COUNCILMEMBER VICTORINO: Yeah, please.

CHAIR MOLINA: Yeah. What happened was back at one of our meetings we decided as it related to Condition 13 to go and work off of the applicant's. That, that Condition 11 the applicant put in. Don't, don't let that confuse you. That's just their own numbering.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: So, you know, when we finally got to Condition 13 to discuss the cultural plan then Member Anderson brought up the discussion of the Conservation Easement and we went with that. But we never came back to really fully discuss the applicant's condition which we had thought of discussing. So that's where we're at today and I'm asking your guys consideration of that. Is this something we want to keep in as a condition or basically delete? Because I believe there's a difference between a cultural plan and a conservation easement. Maybe Planning can, you know, clarify that for me. But what I've thrown out to you today is to continue the discussion or what very limited discussion we had had on this condition proposed by the applicant.

So that's kind of where we're at and Member Johnson is offering some pointers and suggestions and she wants to offer some language to I guess strengthen this as a potential condition we can consider. Yeah. So that's what's she's alluding to is the applicant's Condition 11.

COUNCILMEMBER VICTORINO: Okay. So, so, don't worry about 13. Don't worry about what we approved. We are actually discussing 11.

CHAIR MOLINA: Yeah, 11 is a cultural plan and not a Conservation Easement. The Conservation Easement that we had the long discussion on that's different from what we're looking at here with the cultural plan and so.

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COUNCILMEMBER VICTORINO: That's the one we approved earlier.

CHAIR MOLINA: Yeah. That's . . .

COUNCILMEMBER VICTORINO: But what about this Historic Preservation condition that we approved which I voted no too but I mean I guess it got passed. Where does that fit on all of this matrix?

CHAIR MOLINA: Well, this is related to the cultural plan. Again SHPD my understanding is one of the approving agencies so.

COUNCILMEMBER VICTORINO: Well, Historic Plan, Preservation condition SPDH [*sic*] and Hawaiian, Office of Hawaiian Affairs was all involved in this also. So that's why I'm getting confused because there's so many, and I'm sorry it just --

CHAIR MOLINA: Yeah. It, no it's, it's okay.

COUNCILMEMBER VICTORINO: --I'm trying to get to where everybody is so that I understand where everybody is because I'm not there yet so. And I just, I'm sorry, Mr. Chair, it's . . .

CHAIR MOLINA: No apologies necessary. It is a very complex application. And, and then Ms. Suyama has made or suggested to us that maybe the Maui Resource Commission, Cultural Resource Commission they have the, I guess input be, their input be taken into consideration as well on this matter. So, Member Johnson?

COUNCILMEMBER JOHNSON: I'm going to work on this and then I will try and present something when we reconvene tomorrow. I just think that there are really good points. Mr. Victorino, you know, he's recalling a lot of the things that we discussed but because there are different components to this I'll, I'll work with Staff and try and see if Ms. Suyama might make some suggestions too that incorporate not only the current one that we have but some of these other components that we really overlooked. Thank you.

CHAIR MOLINA: Okay. So, we'll leave it to Member Johnson to give us a proposal tomorrow.

COUNCILMEMBER BAISA: Mr. Chair?

CHAIR MOLINA: Member Baisa?

COUNCILMEMBER BAISA: Just one quick comment. Whatever we're going to wordsmith, I am totally interested and I really want to see a mention of Na Kupuna `O Maui in the condition. In accordance with Hawaiian tradition I really think that we better respect our elders and their input and I'd like to see it in there.

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CHAIR MOLINA: Sure.

COUNCILMEMBER VICTORINO: And, and, Mr. Chair.

CHAIR MOLINA: Mr. Victorino.

COUNCILMEMBER VICTORINO: That's, that's why I'm saying when we had discussed this and the applicant had brought this forward I thought it was a good idea because who better than our *kupunā*s to, to lead us in this, this one particular area. So I mean whatever incorporation just so long as, and if, if it's a long list of whoever is going to be included be inclusive of all. And I mean and maybe the words, and, and Ms. Johnson could put in anyone who has applicable or has any *mana'o* to share with this, this plan be allowed to. I mean just to make sure that you don't leave anybody out. Because maybe some of my descendants might have something to say at this point in time because I'm not sure which descendants we've gone through at this point. But to show all the respect to all our *kupunā*s then let's not leave anybody out, and let's finalize this.

And again the other thing is I'd like to, if Ms. Johnson gets words tonight done and she gets her in..., her-what do you call that-inspiration, if she could e-mail us so that we can read it over 'cause I get, another thing is I get tired is I have so many conditions that by the time I get to whatever we really talking about I got to throw away 25 papers so. And then the matrix, sir, can we get something updated?

CHAIR MOLINA: Yes. The, the Chair did say that we're give, get you an updated matrix tomorrow so.

COUNCILMEMBER VICTORINO: Well, thanks. Thank you.

CHAIR MOLINA: Mr. Pontanilla?

VICE-CHAIR PONTANILLA: Thank you. After that long discussion, you know, I agree with Deputy Suyama in regards to having the CRC as an approving authority because through the CRC you'll get public testimony in regards to this one important condition. If we just going to rely amongst us, you probably won't have any discussion. So I agree with the Planning, Deputy in regards to having the CRC as an approving authority.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Thank you, Mr. Pontanilla. Yes, Mr. Victorino.

COUNCILMEMBER VICTORINO: Just one, just one, can I have Corp. Counsel also because every time somebody become an approving body we also seem to turn to him. So, I'm going to turn to him and say if we craft this condition would that body have autonomy to approve this? Because again we've kind of discussed this matter. Every time we brought somebody up is do they have the autonomy or the, the, the . . .

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CHAIR MOLINA: As a reviewing agency --

COUNCILMEMBER VICTORINO: Yeah, as a reviewing agency . . .

CHAIR MOLINA: --to approve?

COUNCILMEMBER VICTORINO: Yeah, as, as, as far as you can tell us, Mr. Hopper? And I'm sorry to keep putting you on the hot seat.

CHAIR MOLINA: Okay. Mr. Hopper?

MR. HOPPER: Of what I know of the CRC they're typically are, they typically are a remending [*sic*] recommending body and a commenting body. I'm not sure how often they approve of things. I, I think they occasionally do, and the Planning Department could be a bit more clear on that. And they, you know, through your Department, your Staff has recommended that they be an approving body due to the fact that they're subject to the Sunshine Law and every, you know, every aspect of the approval is going to have to be open to the public. And so, I wouldn't see a problem with it. You know I'm not sure what criteria they would use to approve it but, you know, they have reviewed plans in the past before I'm just not sure how often they approve it. I'm not saying you couldn't do it but that's just my experience with the CRC.

COUNCILMEMBER VICTORINO: If, Mr. Chair, Ms. Suyama could, could comment please?

MS. SUYAMA: Okay. The Maui County Cultural Resources Commission has two, two functions. One is they have some approving authority especially in the Historic Districts that have been created by the County. They also are a recommending agency, which they provide recommendations to not only the Planning Commission, to the County Council as well as to other departments and agencies. Their authority is basically what you grant them through County ordinance because they are part of the Maui County Code in which we created a Maui County Cultural Resources Commission and it is as based upon what authority this body has granted them.

COUNCILMEMBER VICTORINO: Okay. Ms. Suyama, so going along those same lines you mentioned about their authority in the Historic District. Would this be considered a Historic District? Do we have to designate this as an Historic District? I'm that's . . .(*inaudible*). . .

MS. SUYAMA: I, I don't, I don't believe you need to.

COUNCILMEMBER VICTORINO: Okay.

MS. SUYAMA: What you're doing is you're designating it through the condition that you're telling the Cultural Resources Commission we want you to be the approving body. So you're delegating the responsibility to them.

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COUNCILMEMBER VICTORINO: And, and SHPD and the rest of them have, have no play in, in this, this particular condition?

MS. SUYAMA: They may have their own reviewing and approving authority. I'm not sure, you know, how that would work. But in this case because we're looking at it through a Change in Zoning we're saying that, you're saying that you want a cultural plan to be developed and you want that plan reviewed by certain agencies but you also want that plan to ultimately be approved by an agency or an authority. So, I mean I think that's the final. In terms of standards, I would rely on the expertise of the Cultural Resources Commission because by law there are certain expertise that need to be on this Commission. And normally we have an archeologist, a historian. We have people that are versed in, you know, cultural resources. We also have an architect that's on the Board, on the, on the Commission. So they provide the, you know, the, the, I guess the professional credibility to the, to the body that they make these decisions. Because it's not like you pick anybody to be on this Commission. You have to have a background in either archeology, cultural, historical, you know, I mean you have to have some kind of background in it before you're appointed to this Commission.

COUNCILMEMBER VICTORINO: Okay. Okay. Mr. Chair, I, I guess, you know, that explanation at least clears my mind and I just, I, I feel a little bit better now that I understand, you know, their, their realm of authority. Because again we've gone back and forth with various agencies and who has what and so I just want to make sure that whatever comes out is, is something that can be and will be something that everybody has, you know, some kind of authority to, to bring forward. Thank you, Mr. Chair.

CHAIR MOLINA: All right. Thank you, Mr. Victorino. So, we will leave Member Johnson the opportunity to provide for us tomorrow a revision for the Cultural Plan condition as submitted by the applicant. So, we will consider that. One other thing Mr. Hopper had mentioned I guess related to the issue of transient vacation rentals or timeshares shall, not being allowed within the Project District. Is there any other issues as it relates to that, Mr. Hopper?

MR. HOPPER: I'm just saying you may, this maybe, seem to be overkill but you may want to specify that, that the --

CHAIR MOLINA: Members-I'm sorry, Mr. Hopper-Page 19, Members.

COUNCILMEMBER VICTORINO: Page 19. Okay.

CHAIR MOLINA: Last page.

MR. HOPPER: --that I think the issue is, yes, they're already prohibited but can people apply for a Conditional Use Permit in the Project District? You could maybe provide direction that, that it would restrict the right of, if it's your intention, restrict the right of someone to apply for a Conditional Use Permit within that Project District area for transient vacation rental use if that's your intention.

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CHAIR MOLINA: So, so, Mr. Hopper, just for clarity sake already in, in this area you cannot do a TVR even without this condition that we've put in here.

MR. HOPPER: Right. Yeah. The idea is that currently there's no place except for Hotel Districts that someone can operate a transient vacation rental; however, that's not to stop people from applying for a Conditional Use Permit and the Council has granted Conditional Use Permits for that. So if your intention is, is not only to prohibit by the zoning, by a condition of zoning at this stage transient vacation rental use but also that you wanted the land in perpetuity to never be able to have transient vacation rental use then you could specify that the Planning Department shall not process a Conditional Use Permit application for a transient vacation rental or time share in the Project District.

CHAIR MOLINA: No. Mr. Hopper, wouldn't that be inconsistent with the Department's current policy? I mean, in Ag zoned areas we have people coming to us with Conditional Use Permits for vacation rentals. Now, if we implement, you know, what, what you're, you're saying we could in terms of, you know, no Conditional Permits would be considered, would that make it inconsistent with the Department's policy though?

MR. HOPPER: Well, I'm not sure how the Department would process the permit in the event that there's a actual condition on the property restricting the use but we do know even though there's a, there is a zoning law right now that actually expressly prohibits, it's not that it doesn't mention the use but actually expressly prohibits transient vacation rentals as a use. The Department still processes the application and sends it through to the Commission and then to the Council even though it does say that that use is, is prohibited. And I'm not sure if the Department as it has in other, as you have in other zoning changes, you've done this similar restriction, I'm not sure how the Department would view that restriction as far as whether or not it could even process the permit. If you would want it to stop at the permit level that could be a potential option for you. But I just wanted to clarify and, and just point that out as a potential issue that you may still get applications for Conditional Use Permits for transient vacation rentals despite this prohibition. And if your intention is to not have any permit requests, then you could state that in the condition.

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

COUNCILMEMBER VICTORINO: Again, so the new one we put in here no transient vacation rentals or time share shall be allowed within the Project District isn't clear?

MR. HOPPER: Well, it's, it's very clear as is the zoning right now. However, again a Conditional Use Permit has allowed people to operate a use that's prohibited in that area by Council action. And I just wanted to point that out that the problem is not the restriction, which arguably may be different now that it's actually in a condition on the property. But that the problem is not the condition or, or the problem is not that it's not clear in the zoning it's that people have applied for

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permits and have obtained the permits from you as Council, you know, based on a Conditional Use Permit, which is essentially a waiver of the requirements.

COUNCILMEMBER VICTORINO: So . . .

CHAIR MOLINA: Mr. Victorino, if I could add some further clarification? If I'm interpreting Mr. Hopper correctly he's asking us to consider not even allowing someone from applying for a Conditional Use Permit for a TVR in, in an area already restricted.

COUNCILMEMBER VICTORINO: Well that's, that's my next question. If we put this verbiage in would this virtually eliminate, oh, well not virtually, would this eliminate any possibility of a Conditional Permit being issued for this area?

MR. HOPPER: Yeah. They would have to get an amendment to that condition it's the only they could do that.

COUNCILMEMBER VICTORINO: Well, but, okay, so you're saying, yes, but it's not guaranteed because now they can go for an amendment which again I'm not going to get into this because I don't want to get into a long . . . *(inaudible)* . . .

MR. HOPPER: That would make the Planning Department not even process those applications.

COUNCILMEMBER VICTORINO: So . . .

MR. HOPPER: Yes. Without an amendment to the condition there's no way someone could operate a transient vacation rental.

COUNCILMEMBER VICTORINO: So that verbiage will eliminate any chance of them getting a Conditional Permit?

MR. HOPPER: In my opinion, yes, it would.

COUNCILMEMBER VICTORINO: Then, Mr. Chair, I'd say let's do it. I got no problem with that.

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

COUNCILMEMBER JOHNSON: My suggested language would be no transient vacation rentals or time share shall be allowed within the Project District and further no Special Use or Conditional Use Permits for such accommodations shall be accepted by the Planning Department.

COUNCILMEMBER VICTORINO: Second. I second that motion.

CHAIR MOLINA: Okay. All right. Staff, do you need Member Johnson to go over? Member Johnson, can you restate the amendment?

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COUNCILMEMBER JOHNSON: Sure. I'll just, it's the condition as it states and then put, "and further no Special Use or Conditional Use Permits for such accommodations shall be accepted by the Planning Department".

CHAIR MOLINA: Staff, are we fine? Okay. All right. Discussion? Sorry. Okay. I'll recognize Member Johnson as the maker of the motion --

COUNCILMEMBER JOHNSON: No, that's fine.

CHAIR MOLINA: -- unless you want to yield to Member Baisa. Member Johnson?

COUNCILMEMBER JOHNSON: Well, the, the only thing and Mr. Hopper and I discussed this too because what happens is our intentions and our wishes and our hopes are that this take place but the reality is that people will continuously, if allowed, file their applications and then what you have really amounts to spot zoning because then they're going to change the use. If we want to have strict adherence to this then my thought is it should be very clear with no wiggle room and that I don't think we can be more clearer than this. So, I support this.

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

COUNCILMEMBER BAISA: I'm learning to think about unintended consequences. I understand what we're trying to do and I think it has a lot of merit but I'm wondering about whether or not we're singling out one section of really a resort area and saying you can't do TVR's but yet on the other side I think we're now looking at a bill saying that that's where we can do it. So, I'm worried about the inconsistency and I'd like to ask Corp. Counsel about that.

CHAIR MOLINA: Okay. Mr. Hopper?

MR. HOPPER: Inconsistency as far as what you mean in the other bills where you've stated that the basic language that we're talking about here that you believe that this would be saying that you can do it there or?

COUNCILMEMBER BAISA: No. No. It's my understanding that the draft TVR bill that is being discussed right now and looked at permits TVR's in the resort areas.

MR. HOPPER: Okay. I, I can't really address that bill I mean based on some, you know, Sunshine Law issues. I would say that if, if that problem does come up and you've already got this property zoned that's something you need to consider if this is in one of the destination resort areas in that bill. But again I don't want to talk much about a separate bill. You know I guess it's in the same context that it may or may not apply to this one but that hasn't even gone through the Planning Commissions yet. That's at a very early stage. And so, when it does come before you it would be a good idea to, you know, to look at that and see if it's consistent or inconsistent with the Planning Department's plans. And obviously, you believe as a Council having voted on the

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initial condition that this would not be an appropriate area for vacation rentals . . . (*change tape, Side 4A*). . . I'm just, I'm basically recommending that that condition would, would effectuate your intention here that's what I'm hearing. And I'm recommending it for that. I'm not recommending it as a policy, you know, issue. I'm recommending it as the, the most effective way to do this. If you want to allow vacation rentals or the potential for Conditional Use Permits for vacation rentals in this area then you could leave the Conditional Use Permit application as an avenue for people to get that or you could, you could zone this area Hotel if you wanted to or, or part of a Project District area where you would allow the use of vacation rentals. So, you would have that option. But, you know, to effect . . . , best effectuate what has been suggested I would recommend the language that you're discussing right now.

COUNCILMEMBER BAISA: Okay. I just thought we better talk about it.

CHAIR MOLINA: Yeah. Thank you, Member Baisa. I think it's a good point that you do because the Chair again had some, well, is on the fence with it because of the pending ordinance and because of, you know, and, and it's ironic we don't have the Planning Director here to give her comments on that as well. So, Member Pontanilla?

VICE-CHAIR PONTANILLA: Thank you, Chair. I know several years ago we approved a project on the West Side and one of the conditions that we imposed was that no transient vacation rentals. But I don't know how the language reads. I don't know if Corporation Counsel would even know about that particular language that we utilized for that one development.

MR. HOPPER: In my view, the general language you're talking about now when you look at it and I look at it I think it prohibits vacation rentals. And I don't think you can grant a Conditional Use Permit for vacation rentals in those areas because it's a condition of zoning. However, I just wanted to be very clear, to be doubly clear just because there's a lot of situations where people apply for the permits anyway. So, it may seem redundant. It may seem like overkill but that's just something that I saw has potential, you know, as a concern that I had. But I think that the basic language would restrict that. It's just that I wanted to basically quell any doubt there.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: If, if we could ask the applicant because we do it every time --

CHAIR MOLINA: Sure.

COUNCILMEMBER VICTORINO: --and I think it's only fair that we give him an opportunity to speak about this particular condition that we're adding even though I think it's a good one to let him give his thoughts on the matter.

CHAIR MOLINA: Okay. Mr. Victorino, he's, he already got up. He's quick. Mr. Jencks.

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MR. JENCKS: You got me on the spot.

COUNCILMEMBER VICTORINO: You can move.

MR. JENCKS: Well, I was, you know, up and down, up and down, you know, Members, you voted to amend to prohibit transient vacation rentals and timeshares within the Project District in perpetuity. You did that already. Okay. Precise wording of condition not discussed. Draft language at right. It says, "No transient vacation rentals or timeshares shall be allowed within the Project District". Now, assuming this is approved, this is a condition of zoning. Okay. It's a condition of zoning. I have a planning background. I would tell you as a planner educated and trained that if I wanted to do a time share or a TVR I'd have to get a Change in Zoning which a pretty difficult threshold to go through. That means going to the Planning Commission and coming before you to do a timeshare in this district with this condition approved.

If you want a really steep threshold and one that would discourage people, if you file . . . if you follow that line of logic they'd get you there. Mr. Hopper's suggestion to you that you pass, that you include a condition that says you can't even get a CUP begs the next question, what other kind of use do we have to say then, oh, then I can't get a CUP for a used car lot either. I mean where does that end? That discussion could take you down a road that you could never find the end to. So, I'm just saying to you, you put in a condition in here to do a TVR or a timeshare I got to get a Change in Zoning, which is one of the toughest thresholds to recover from. That's a, it's a terrific threshold for an owner. So, just follow this line of logic I think you're where you need to be.

CHAIR MOLINA: Mr. Victorino.

COUNCILMEMBER VICTORINO: Though you make a compelling point, I guess I tend to have to agree just a little bit towards Mr. Hopper 'cause it's not you that we're concerned about, sir. And I'm, I'm sorry you're not the one that I'm concerned. You're a good man and you may, you may be upright and forth..., but it's all the guys who buy after you, buy and then decide they're going to have a TVR.

MR. JENCKS: Mr. Victorino, if I'm an individual landowner --

COUNCILMEMBER VICTORINO: Yes.

MR. JENCKS: --I own a house in this project and I want to do a TVR --

COUNCILMEMBER VICTORINO: Yes.

MR. JENCKS: --when I go to talk to the Department of Planning and they say to me, you know, Mr. Jencks, you can do a TVR but you need to get a Change in Zoning. I can assure you people are going to say I'll pass.

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COUNCILMEMBER VICTORINO: Well, I hope you're absolutely correct. Thank you. I mean it's nothing against you. Again, all right.

MR. JENCKS: No, I, I accept that but I think that's a much higher threshold. I mean I think Ms., Ms. Hiraga would agree with me, a professional in the field, that's a much higher threshold to go through than a Conditional Use Permit because that changes the zoning of the property.

COUNCILMEMBER VICTORINO: Mr. Chair, could we have Mr. Hopper comment on those, that last statement, Mr. Hopper?

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: I agree you would need to get a Change in Zoning. I'm just trying to have that clarified that you're not going to get a Conditional Use Permit. And, and it may turn out that it's not an necessary condition if you've got a Planning Department that interprets it that way as I think this one will. That's how I interpret it. I think you need to get a Change in Zoning; that's absolutely correct.

COUNCILMEMBER VICTORINO: Okay.

MR. HOPPER: Which is why I want it to say that you're not going to get a Conditional Use Permit and you're not going to even apply for one for this use. And I understand the, the issue well if you would say it for that use you would say it for all other uses but given the history of transient vacation rentals, the number of permit applications, and the, the fact that it is a use that's expressly prohibited already in zoning and yet has still managed to have several, you know, issuances of Conditional Use Permits, that, that was my concern to make it clearer to people that you apply for a Change in Zoning to amend the condition. And I guess right now, yeah, it would. You know the only concern is that a Conditional Use Permit is a Council action and, you know, I'm, I'm looking to just stop any potential arguments. Granted I think they're all losing arguments. I would agree with Mr. Jencks they are losing arguments and you would not be able to obtain them. But, and, and what you have arguably is, is sufficient. It's arguably sufficient but I just wanted to bring up that issue and that concern. And if you feel that your, the condition is adequate then you can certainly leave it as it is.

COUNCILMEMBER VICTORINO: So, what you've done is basically saying to us and to the public that we've got this body armor right now and we're going to put a plate of steel in front of it. So you're not bullet proof but pert near close to getting anybody from making that change in the future -- to put it in a nutshell.

MR. HOPPER: Yes.

COUNCILMEMBER VICTORINO: Thank you.

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CHAIR MOLINA: Okay. Thank you. Member Johnson?

COUNCILMEMBER JOHNSON: Yes. And I'm sure, you know, people would say, oh, this is redundant overkill but I agree with Mr. Hopper in that if you go to the next level and you just preclude it, this is a residential development and all of their ads that are running on the radio and elsewhere basically it's not a resort, a luxury resort development. It is a residential development. And if people want to apply for permits there's nothing here that says someone in the future couldn't interpret, well, you know what it's permitted by zoning but they didn't address the issue of Conditional Use or Special Use Permits for exceptions. Because that question always seems to come up because even in zoning categories right now where it's expressly prohibited there's still people that will submit applications. And the Department through several different administrations has taken different positions on that. So this way if we want to make it clearer, I say you know what it may seem like overkill but that's why I'm making the proposal. And Mr. Hopper in discussion we raised the issue, this way you can't make it anymore clear than that.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Members, we do have a proposal, proposed amendment --

COUNCILMEMBER JOHNSON: Motion.

CHAIR MOLINA: --on the floor for this particular condition. If there's no other discussion, the Chair is going to call for the vote. All those in favor of the condition, excuse me, the amendment to the condition to include that no Conditional Use Permits will be allowed on the subject property signify by saying aye.

COUNCIL MEMBERS: Aye.

CHAIR MOLINA: All those opposed. Okay. The Chair will mark it unanimous five-zero; four excusals - Members Mateo, Anderson, Medeiros, and Hokama.

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

**NOES:**      **None.**

**EXC.:**      **Councilmembers Anderson, Hokama, Mateo, and Medeiros.**

**ABSENT:**      **None.**

**ABSTAIN:**      **None.**

**MOTION CARRIED**

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

CHAIR MOLINA: I believe that about concludes what the Chair had for you today. There are some other minor revisions we'll probably go over tomorrow that I guess Staff had made me aware of some things to consider, as Ms. Nakata tries to put together a new matrix for us, a concise and up to date matrix. So, Ms. Nakata, anything else before the Chair recesses?

MS. NAKATA: No, Mr. Chair. Are you going to cover those minor revisions tomorrow?

CHAIR MOLINA: Yeah. Members, how much time do you have? Do you want to have a brief discussion on those minor revisions? I guess well it may seem minor, you know, it could end up turning out major. Do you have time or do you need to go? You have commitments already?

COUNCILMEMBER VICTORINO: Yeah.

CHAIR MOLINA: Okay. Members, we'll save that for tomorrow. So, with that being said, Members, we will recess this meeting until 2:30 tomorrow Tuesday, November 20<sup>th</sup> right here in the Chambers. So, 2:30 tomorrow afternoon. And Ms. Nakata will try to get you the updated matrix as soon as possible. I would ask as soon as you get it if you can review it prior to the meeting because as far as the Member's availability tomorrow and how long we go may be short. So, if at all possible you can review the matter. So, with that being said we will recess.

COUNCILMEMBER BAISA: Chair?

CHAIR MOLINA: Yes. Member Baisa?

COUNCILMEMBER BAISA: Excuse me. Tomorrow you'll just have a bare quorum?

CHAIR MOLINA: Let's ask Staff who is available tomorrow? We have, is it five or six people tomorrow?

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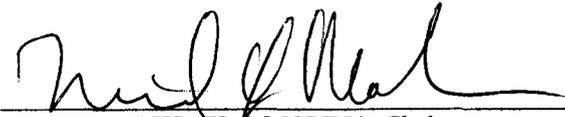
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**MS. NAKATA:** Staff has not polled outside the Chamber.

**CHAIR MOLINA:** Okay. Other than what we did here today we have five. A possibility of one member, I believe Member Mateo has some meetings but he would if, if we decide to come down to vote he could possibly make himself available for a possible vote if that is the will of the body. So that is what I've been told but for now we're looking at the bare quorum we have right now for tomorrow 2:30. All clear, Members? So, 2:30. Okay. Members, we are in recess until 2:30 p.m., November 20, 2007, right here in the Chambers. Meeting in recess. . . .*(gavel)*. . .

**RECESS:** 4:04 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair  
Land Use Committee

lu:min:071119r

Transcribed by: Cathy Simmons

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CERTIFICATE

I, Cathy Simmons, 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 13th day of December 2007, in Wailuku, Hawaii.

  
\_\_\_\_\_  
Cathy Simmons