

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

November 20, 2007

Council Chamber

RECONVENE: 2:35 p.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair (Arrive 2:50 p.m.)
Councilmember Gladys C. Baisa, Member
Councilmember G. Riki Hokama, Member (Arrive 3:53 p.m.)
Councilmember Jo Anne Johnson, Member
Councilmember Danny A. Mateo, Member (Arrive 3:31 p.m.)
Councilmember Bill Kauakea Medeiros, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember Michelle Anderson, Member

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

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

OTHERS: Charles Jencks, Owner's Representative, Honua`ula Partners, LLC
Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc. (Applicant's entitlement consultant)
B. Martin Luna, Esq., Carlsmith Ball, LLP (Applicant's attorney)
Joyclynn Costa
Kimokeo Kapahulehua
Additional attendees (8)

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

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18, 2007 is now in session. Today is Tuesday, November 20, 2007, 2:35 p.m. Members in attendance are Members Baisa, Johnson, Medeiros, Victorino, and Molina. Excused are Members Mateo, Anderson, Hokama, and Pontanilla. We just did receive word from Member Pontanilla's office that he is on his way. From the Committee, we have Committee Secretary, Tammy Frias, and wandering around the building I'm sure we have Committee Analyst, Carla Nakata. And from the Corporation Counsel's office, we have Corporation Counsel, Michael Hopper. Very good, Members, thank you for being here today. We've just made quorum so the Chair appreciates you giving your time to address this particular matter.

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Members, we have two things left to discuss today. One is a proposed amendment to Condition No. 13. At yesterday's meeting, Member Johnson proposed language for the Committee to consider for Condition 13, which relates to the Cultural Plan. And before we do that for you, the Members information, and the public, an updated matrix was submitted to all Members' offices this morning. And I wanna thank Staff Analyst, Carla Nakata, for working very hard to get this matrix, updated matrix out, as well as an 11 page document listing all the Conditions of Zoning thus far for this particular matter. So, I wanna thank Ms. Nakata for working extra hard to get this information out to you. And I trust that all of you had a chance to basically review the updated matrix as well as the conditions of zoning. So, with that being said, I will turn the floor over to Member Johnson.

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

COUNCILMEMBER JOHNSON: Yes, Mr. Chair, and I was hoping that Ms. Suyama would be here because I think that she's working with Ms. Nakata. There was a couple suggestions that she had prior to us considering the condition that I had consolidated. I, I can, if you. . .oh, here's Ms. Suyama right now.

CHAIR MOLINA: Okay. All right, joining us is the Deputy Director of Planning, Colleen Suyama. Director, you have a question for you from Member Johnson related to the listed Condition 13, Cultural Plan.

COUNCILMEMBER JOHNSON: It's actually not a question because Ms. Suyama and I met before the meeting and she had some very constructive suggestions that were made, and she can probably inform us as to whether or not Ms. Nakata has been able to produce those yet. And if not, I believe that Deputy Director Suyama could actually go through, you know, the condition and at least explain verbally what I've got.

CHAIR MOLINA: Okay, Director?

MS. SUYAMA: We did look at the proposed draft from Councilwoman Johnson and we did have some concerns that the HRS 6E is primarily for the preservation of the sites and burials, rather than the culture. So, there is no really review process on the culture and that was one of the reasons why we had, you know, recommended a specific condition about the Cultural Preservation Plan. I have since worked with Ms. Nakata, and she has the draft reformatting of the condition, and I think you should wait until she comes because she's printing it up--the proposed draft, redraft of that condition.

COUNCILMEMBER BAISA: There she is.

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CHAIR MOLINA: Okay. And here she comes as we speak. Okay. Thank you, Ms. Nakata, if we could get the draft distributed to all the Members. Oh, oops. Okay.

COUNCILMEMBER BAISA: Oh, oh, oh, careful. . . .*(Inaudible)*. . .

CHAIR MOLINA: Okay, let's not. . .let's do things safely now.

COUNCILMEMBER JOHNSON: If you want me to while Ms. Nakata is handling, handing it out, I can read it for the members of the public.

CHAIR MOLINA: Yes, thank you, the Chair, would appreciate that, Member Johnson. Thank you.

COUNCILMEMBER JOHNSON: And then that way at least we'll be able to, you know, inform the public of what the condition says. And again, I combined three conditions and they're now in two paragraphs. But I was taking the recommendations that had been made by Deputy Planning Director.

The condition that I'm proposing would read "That Honua`ula Partners, LLC, its successors and permitted assigns, shall prepare a Cultural Resources Preservation Plan, in consultation with Na Kupuna `O Maui; lineal descendents of the area; other Native Hawaiian groups; the Maui County Cultural Resources Commission; the Maui/Lanai Burial Council; the Office of Hawaiian Affairs; the Department of Land, Land and Natural Resources; State Historic Preservation Division; the Maui County Council; Na Ala Hele; museum curators; healing practitioners and others. The CRPP shall consider access to specific sites to be preserved, the manner and method of preservation of sites, and the appropriate protocol for visitation to cultural sites.

Honua`ula Partners, its successors and permitted assigns, upon completion of the CRPP shall submit the plan to the Department of Land and Natural Resources, State Historic Preservation Division, and the Office of Hawaiian Affairs for review and recommendations prior to Project District Phase II approval. Upon receipt of the above agencies' comments and recommendations, the CRPP shall be forwarded to the Maui County Cultural Resource Commission for their review and adoption prior to Project District Phase II approval."

CHAIR MOLINA: Thank you, Member Johnson. Committee Members, questions on the proposed condition from Member Johnson? Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah, thank you, and you know, in reviewing this, and the one we. . .she sent me last night so, I like, you know, acknowledge that I know she's been working hard on this. But I. . .the only language that I still. . .*(sigh)*. . . yeah, I guess, you have all others. Again, I can say this okay because, you know, we've included any. . .anybody that should be a part of this plan will be incorporated in here. So, I guess, that's the key right there. You've incorporated everybody and I think that's important that no one is left out as far as this Preservation Plan or this Cultural Resource Plan is concerned, yeah, Preservation Plan. So, yeah,

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Mr. Chair, I can support this and, you know, if she makes a formal motion, I'll second this as far as that is concerned. So, thank you, Mr. Chair.

CHAIR MOLINA: Okay. Thank you, Mr. Victorino. Committee Members, any other comments? Well to be consistent, as Mr. Victorino had stated yesterday, let's get Mr. Jencks, the applicant, up here for his comments.

MR. JENCKS: Good afternoon, everyone.

COUNCILMEMBER BAISA: Good afternoon.

MR. JENCKS: And Happy Thanksgiving. Appreciate the . . .this draft proposal. My only concern here is that when you get to museum curators. Who would that be? Is it, is it the Smithsonian? I mean, it's, it's a pretty broad category. Healing practitioners, well I mean, it isn't defined, so it leaves it open and, and it's better to have some kind of specific avenue otherwise you never get, get finished. Healing practitioners and others. I'm good with all of them because when this thing is produced. . .this document is produced it will be submitted to SHPD, and it will be posted for review and comment, and anyone can take a look at it and comment on it. It would be my preference to stay to the point. I think it's a great condition, stick to State Historic, all the . . .except for museum curators and healing practitioners and others. Leave it to those agencies that post it for review. You'll get the comments back from almost anyone that's interested. And then I think you'll have a, you'll have a more direct path from the initiation of the document to the conclusion. Otherwise, I think it's fine and we would support it.

CHAIR MOLINA: Okay, thank you, Mr. Jencks. Member Johnson?

COUNCILMEMBER JOHNSON: Thank you. Yes, and, Charlie, just so that you know because I didn't want to limit it to just Bishop, Bailey House. You know, that. . .those are the museum curators that I'm referring to, not the Smithsonian or others.

MR. JENCKS: Oh, I, I, I was being a little facetious but . . .

COUNCILMEMBER JOHNSON: Yeah. You know, so, anyway that's the implication and healing practitioners that would be in the Hawaiian healing arts--laau lapaau. You know that type of thing where you also have Hawaiian healers who may actually have some valuable input because of what had taken place on property at a much earlier time or if there's herbs or plants or roots. That, that was the only reason in putting those in. And as Member Victorino said, we don't want to limit it and, you know, I mean, these are just examples. You don't have to go to everybody. And if they don't want to comment then you could send something to Bailey House that would satisfy it. You could send something to. . .and I know that there are practitioners in the healing arts who are Hawaiian healers, you could send just a copy as a courtesy. That's really all that that was referring to.

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MR. JENCKS: That, that is fine, and I, and I, I don't disagree with that. The problem is when you're not, when you don't fence this in, you don't put a fence around it, the comments that will come back to me, it will be well how come we didn't ask so and so. If you don't put boundaries around this type of process, it could be endless. That's the concern. That's my concern. I agree, I agree with you, the problem is without some kind of boundary or definition, it could be an endless reiteration of well did you talk to these people? Did you talk to these people? And you can't get closure that way.

COUNCILMEMBER JOHNSON: Well--excuse me, I have the floor--if we were to insert museum, you know, like in front of museum curators just say local, you know, or Hawaiian museum, you know, Maui-based.

MR. JENCKS: I think, honestly, truly, this thing being posted by SHPD and working with OHA, you're going to cover everybody that you need to cover.

COUNCILMEMBER JOHNSON: You don't have any objection though, you know, to still leaving in the language about any other interested party or any others?

MR. JENCKS: If it's posted, you'll get all those people--

COUNCILMEMBER JOHNSON: Okay.

MR. JENCKS: --commenting.

COUNCILMEMBER JOHNSON: All right. Thank you.

MR. JENCKS: Okay.

COUNCILMEMBER JOHNSON: And, and, I, I don't have a problem. I'm not married to this. I just wanted to because other Members of the Council and Mr. Victorino specifically had said you don't want to leave anyone out.

MR. JENCKS: Right.

COUNCILMEMBER JOHNSON: So, I tried to put those general categories in but.

MR. JENCKS: That's a good approach. I'm mean that. . .it has validity. But once again, if you leave it too open you just simply can't get closure on it.

COUNCILMEMBER JOHNSON: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. I think, Member Victorino had a question for Mr. Jencks, but before I turn the floor over to Mr. Victorino, I presume a question for Mr. Jencks. The fact that S..., SHPD will post this for public comment anybody from all walks of life can

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give comments on this. So, I think that basically, you know, will, will give, provide everyone the opportunity, whether you're a practitioner of the Hawaiian arts or not, you can give commentary on this. So, I think that covers, you know, that. . .this, this idea of, you know, museum curators, healing practitioners, and, and if there's any other people that say, oh well how come I wasn't included. Well SHPD, they've offered that and it's by law. Anybody can comment. Mr. Victorino?

COUNCILMEMBER VICTORINO: Yeah. Well, that was, that was what I was going to lead to is if we eliminated curators and practitioners and put and all other interested parties then I think we just covered everything. And if SPDH [*sic*] is the one that's gonna determine, post it, whoever's interested will comment. But then this, this does take it away from a general vague area like, and I don't think Smithsonian would come down, but let's. . .(*inaudible*). . .you know.

COUNCILMEMBER BAISA: This is Maui.

COUNCILMEMBER VICTORINO: You know that's Maui. You know what I mean. So, but would, would, would Ms. An..., would Ms. Johnson be opposed to the fact if we eliminated those two and put "and all other interested parties"?

COUNCILMEMBER JOHNSON: I have no problem.

CHAIR MOLINA: Okay. Member Johnson has indicated no, no problem. So would you like. . .will, Members, would you consider after Na Ala Hele put "and all other interested parties"? We could substitute that, take out museum curators and healing practitioners. Any objections to inserting the language as proposed by Mr. Victorino?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: No objections? Okay, hearing none. I presume there's no objections.

COUNCILMEMBER BAISA: Chair?

CHAIR MOLINA: Member Baisa.

COUNCILMEMBER BAISA: Yeah, as Mr. Jencks was talking about, you know, being sure that nobody's left out in the notification process or consultation process 'cause there'll always be somebody who says I wasn't asked and I didn't get a letter. It was reassuring to hear him say that there would be public notice because what I was gonna suggest is in the condition that we require public notice, particular in a local paper. And that way anybody who wanted to know should know or in our local papers. You know, we tend to think about one local paper but there are little others that people read because they are sent to their mailbox or you can pick 'um up at the supermarket or whatever. But, you know, this business of trying to get the word out is really tricky because I'm always amazed at how people just don't pay attention to, to a lot of things and then they're very miffed because they didn't know about it.

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CHAIR MOLINA: And, and sometimes how it's advertised as well, you know. You'll, you'll. . .they'll advertise it in the paper, but it's in the way back in, you know, Section C, and it's in small print, and, and sometimes it's hard to notice. So, I, I presume SHPD would advertise it in all of the major publications, I would presume, and for notice. But how it's presented is sometimes, you know, if it's in small print. . .

COUNCILMEMBER BAISA: Well, I'm not, yeah, I'm not familiar with their notice requirements and maybe Mr. Jencks would know.

CHAIR MOLINA: Mr. Jencks, I have a question from Member Baisa. Member Baisa, would you like to repeat the question for Mr. Jencks?

COUNCILMEMBER BAISA: Mr. Jencks, do you know what SHPD's notice requirements are? Do they publish in a local paper or statewide or how do they do this?

MR. JENCKS: My understanding is that they, they have a website they post it on for review and comment.

COUNCILMEMBER BAISA: I'm not into the website because a lot, a lot of people don't go to computers. I'm sorry. Those of us who do think everybody else does but from the world I come from many people don't even own one much less do, you know, surfing on the Internet.

MR. JENCKS: This issue raises an interesting question. I was just talking to Mr. Luna about it and that is, how do you get, you know, we, we will create this document. We will submit it for review and comment. They will post it. There is no public notification requirement as a part of this process, even with SHPD. I mean, how do you, how do you notify people that this thing is available? And then how do you then give them a specific period of time to comment to get closure? I mean, it's, it's a, it's not an easy thing to tackle. But I do know, I do know that when you submit documents to SHPD, they post them for review, and, and that's a recognized process, and we can make sure that happens.

COUNCILMEMBER BAISA: I think the reason I'm especially concerned is because this is a Hawaiian issue and, you know, when we think about the people we may want to reach many of them are economically disadvantaged, and they might be the ones who, you know, might be able to help us but or offer information. But they wouldn't even know unless they're told by one of these organizations and that might, you know, broaden the outreach because if people are members of OHA, or members of Burial Council, or whatever, they'll spread the word. Like OHA, I know, has a newspaper that comes out regularly to all of the Members and that might be a good way.

MR. JENCKS: So, once, yeah, once you get it out these groups, like OHA, their distribution is much greater than we could probably manage by saying in *The Maui News*. You get much more exposure that way, I think.

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COUNCILMEMBER BAISA: Yeah, well, you know, I'm trying to get a wide audience and my experience has been to say you put it on the website really doesn't do it because what you reach are the people that are normally looking anyway. But the general public who's busy trying to earn a living are not on the websites.

MR. JENCKS: If it goes to the County Cultural Resources Commission or the Maui/Lanai Burial Council, they post their agendas, and if it's something that's on their agenda, it will get posted on their agenda for review. So, there's, I, I think, we don't have to go too far with this, but I think there is plenty of opportunity for people to review and see this document and comment if they're, if they're compelled to do so.

COUNCILMEMBER BAISA: Thank you. My only other comment, Chair, was. . . thank you, Mr. Jencks, was when we talk about healing practitioners. If we don't say Hawaiian healing pract..., pract..., practitioners, we could have a problem. I don't know about anybody else, but in the Portuguese community, we have our curanderas, and they are healing practitioners.

CHAIR MOLINA: Right. Okay. Director?

MS. SUYAMA: Because there are some concerns that how do you get the public to know that this process is beginning, you could, I could suggest that prior to initiating this consu..., consultation process, a public notice shall be published in a Maui and statewide newspaper published weekly. In other words, you put a notice out that you are going to be doing this consultation process, who the contact people are, and, you know, that type of information, so people who are just reading the newspaper that don't really belong to any, you know, organized group that wanna participate in the process, you know, have the opportunity to be notified. I would suggest that language.

COUNCILMEMBER BAISA: Good.

MS. SUYAMA: The other thing it has nothing to do with public notice, but when I was reading as to what the Cultural Plan should include, which is the, the last sentence of the first paragraph. One of the things I think that should be included is that it should also include and recognition of PASH, which is the Public Access State of Hawaii, in the Proj..., in Project District No. 9, because that's also important, I think, to the Hawaiian community, and it should be included in any kind of cultural plan as to how you gonna guarantee access just because of public access, the PASH decision.

COUNCILMEMBER BAISA: Good.

CHAIR MOLINA: Okay. Thank you. Okay, Members.

COUNCILMEMBER VICTORINO: So where you going to insert this?

CHAIR MOLINA: Well, at this point, we're still considering your language, Mr. Victorino, I guess, and all others or if the Committee would like to get even more detailed that is a decision by the body.

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And the Chair would like to welcome Mr. Pontanilla to our proceedings today. So, it's a choice of keep it simple or if you wanna get more elaborate that's up to you. Personally, the Chair feels, I think, Mr. Victorino's language is sufficient that will cover all, all basis; however, if the majority of you feel otherwise, please say so now. Member Baisa?

COUNCILMEMBER BAISA: Chair, I think if we use Mr. Victorino's language and include what Ms. Suyama had suggested, I think, we may have it.

CHAIR MOLINA: Okay. Director Suyama, can you state the . . . your recommendation to Staff again?

MS. SUYAMA: Okay. After Mr. Victorino's insertion "and all other interested parties." I would insert the sentence "Prior to initiating this consultation process, a public notice shall be published in a Maui and statewide newspaper published weekly." Then the other...

CHAIR MOLINA: Hang, hang on, hang on, Director. Ms. Nakata?

MS. NAKATA: How many publications would be required, published weekly for?

MS. SUYAMA: It's actually just one public notice. The way it's written is "one public notice shall be published in a Maui and statewide newspaper published weekly." So, in another words, it's sort of like you have like *The Maui News* on Maui, and you would have something like the Honolulu or Star Bulletin that would also publish in a State paper.

CHAIR MOLINA: Okay. Director, you had something else to add?

MS. SUYAMA: Right. The other thing is after the last sentence, I would take out after "preservation of sites," take out the and, and at the end of the, you know, period, put in comma "and recognition of public access, State of Hawaii, or PASH, in Project District No. 9."

VICE-CHAIR PONTANILLA: Chair?

CHAIR MOLINA: Okay. Let me see. Let's check with Staff to make sure. Then afterwards I want it read back to the Committee.

VICE-CHAIR PONTANILLA: Chair? Chair?

CHAIR MOLINA: Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Yeah, if Ms. Suyama, can provide more clarity in regards to acronym, acronym PASH.

CHAIR MOLINA: PASH. Oh, yeah, I think you just walked in the room when she was going over that. Madam Director --

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VICE-CHAIR PONTANILLA: To be noted on this.

CHAIR MOLINA: --can you go over it again please?

VICE-CHAIR PONTANILLA: Yeah, to be noted on this --

MS. SUYAMA: Right.

VICE-CHAIR PONTANILLA: --condition.

MS. SUYAMA: I think it's. . .oh, okay. I think it's Public Access Shoreline Hawaii.

MR. HOPPER: It's actually the name of one of the parties in that case. So, I mean, if you have the citation of the case in a specific reference to that you might want to include that. I think we have that in an earlier condition at some point or an earlier draft condition.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Yes, Mr. Victorino.

COUNCILMEMBER VICTORINO: If I may ask, I mean, we've just put in a lot of changes. Would it be all right if we took a quick recess, got it written out so that we can see exactly? I, I know, I know, but --

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: --but we've done a lot of different.

CHAIR MOLINA: All right.

COUNCILMEMBER VICTORINO: And so . . .

CHAIR MOLINA: All right, thank you, Mr. Victorino. The Chair will considerate it. I want, I going to call for a very short recess because we are going to lose quorum today, and I don't want to spend a lot of time on, you know, the longer we spend on, you know, going over this and that and taking recesses so anyway.

COUNCILMEMBER VICTORINO: Well, no, Mr. Chair . . .*(inaudible)*. . .

CHAIR MOLINA: But I, I, I, no, I'll, I'll let the, I'll call for the recess. We'll take a five-minute recess.

COUNCILMEMBER MEDEIROS: Chair? Chair? Just one --

CHAIR MOLINA: Yes.

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COUNCILMEMBER MEDEIROS: -- quick question. You know, I, I'm supporting the, the condition. However, you know, this is, and I don't know legally or, you know, properly. There's some Hawaiian diacritical marks in here and, and they're wrong. And some are left out. So, I think, it would be preferable not to be diacritical marks if you're not going to do it correctly. And if you're gonna put it, put it all in, and be sure it's correct.

CHAIR MOLINA: Okay. Okay, if it comes to language issues then maybe that can worked on at a, you know, at a later point as we go along.

COUNCILMEMBER MEDEIROS: Okay.

CHAIR MOLINA: If, if this matter gets out of Committee then that's something that could be addressed as well. But I want to give Staff five minutes and then we can put it out in writing, and then right after that, the Chair wants to take action on this condition. Okay. Meeting in recess for five minutes. . . .(gavel). . .

RECESS: 2:58 p.m.

RECONVENE: 3:05 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. Members, you have a copy of the proposed amendment from Member Johnson with the additional language recommended by the Deputy Director of Planning, as well as, I believe, Mister, I don't know if it includes Mr. Vic. . .yes, it also includes Mr. Victorino's suggestions as well. Staff, for the record, can you go ahead and read the condition in its entirety, please?

MS. NAKATA: "That Honua`ula Partners, LLC, its successors and permitted assigns, shall prepare a Cultural Resources Preservation Plan (CRPP), in consultation with: Na Kupuna `O Maui; lineal descendents of the area; other Native Hawaiian groups; the Maui County Cultural Resources Commission; the Maui/Lanai Burial Council; the Office of Hawaiian Affairs; the Department of Land and Natural Resources; State Historic Preservation Division; the Maui County Council; Na Ala Hele; and all other interested parties. Prior to initiating this consultation process, a single public notice shall be published in a Maui and a statewide newspaper that are published weekly. The CRPP shall consider access to specific sites to be preserved, the manner and method of preservation of sites, the appropriate protocol for visitation to cultural sites, and recognition of Public Access Shoreline Hawaii. The citations to be provided later in Kihei-Makena Project District 9."

"Honua`ula Partners, LLC, its successors and permitted assigns, upon completion of the CRPP shall submit the plan to the Department of Land and Natural Resources, State Historic Preservation Division, and the Office of Hawaiian Affairs for review and recommendations prior to Project District Phase II approval. Upon receipt of the above agencies' comments and

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recommendations, the CRPP shall be forwarded to the Maui County Cultural Resources Commission for their review and adoption prior to Project District Phase II approval."

CHAIR MOLINA: Okay. Thank you, Ms. Nakata. Committee Members, comments on the amended condition? Member Johnson?

COUNCILMEMBER JOHNSON: Mr. Chair, at this point, I would make a motion to add this provision to our consideration.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay, thank you. The motion has been made by Member Johnson, seconded by Member Victorino. Member Johnson, as the maker of the motion, you have the floor.

COUNCILMEMBER JOHNSON: Yes, and I wanna thank our, Ms. Suyama, because she deals with this everyday. I tried to incorporate as many organizations as I possibly could without getting too far down the line. And I think that the language that's been added by Mr. Victorino and also the publication of a notice is really important because, as was pointed out by Member Baisa, that's the only opportunity that these individuals may have to know that there is a plan to even be commenting on. So, I thank them, and I thank Mr. Jencks also, for supporting this condition.

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: So, I would . . .

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

COUNCILMEMBER JOHNSON: . . .*(Inaudible)*. . .

MR. HOPPER: Just a quick comment. I might maybe recommend not referencing the PASH, this particular PASH case, maybe saying that the Constitution of the State of Hawaii, something a bit broader rather than referencing a specific case because that could limit you as far as any subsequent case law or things like that. I, I think Ms. Suyama has some language that we just briefly discussed, if you so desire. We can get that case in there and cite it, but it might be better a idea to say the, the Constitution, well as, Ms. Suyama has here.

CHAIR MOLINA: Director.

MS. SUYAMA: Okay. Because we were discussing it informally between the two of us what I would suggest instead of citing the PASH case is just say, "and recognition of public access in accordance with the State of Hawaii Constitution, Hawaii Revised Statutes, and other laws."

CHAIR MOLINA: Okay. Staff, can you make note of that and I'm not going to have Staff again go make copies. . . .*(laughter)*. . . Okay, thank you.

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COUNCILMEMBER JOHNSON: Mr. Chair, I think that's fine and, you know, I, I understand Mr. Hopper's concern is that if you reference one case it maybe something in that particular case that did not have applicability in another one. So, better that we make it broad. So --

CHAIR MOLINA: Okay.

COUNCILMEMBER JOHNSON: --I would, I would hope that, that could be added as a friendly amendment.

CHAIR MOLINA: Okay. Members, any objections to, I guess, I presume deleting the references to PASH and substituting it with the language as recommended by the Deputy Director of Planning and the Corporation Counsel?

COUNCIL MEMBERS: No objections.

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

CHAIR MOLINA: Okay, thank you. Staff . . . *(inaudible)* . . .

MS. NAKATA: Oh, would it still end with in Kihei-Makena Project District 9?

CHAIR MOLINA: Deputy Director?

MS. SUYAMA: Yes, it would.

MS. NAKATA: And could Staff also please clarify whether this condition is intended to replace the Planning Commission's recommended Condition No. 13?

CHAIR MOLINA: Member Johnson?

COUNCILMEMBER JOHNSON: Yes, yes, that would be my understanding.

CHAIR MOLINA: Yeah. Okay.

COUNCILMEMBER JOHNSON: Because it's incorporating components of that as well as the other wording that the applicant . . . *(inaudible)* . . .

CHAIR MOLINA: Right, just sort of a, a mesh between the two. I guess, so, so, Members, with the understanding, we are gonna replace using this condition, as proposed by Member Johnson, and, and amended by the Planning Director, as well as, Mr. Victorino. And we will not consider either the Condition 13 or the Condition 11 as proposed by the applicant. So, this basically substi..., is a substitute for either one of these two proposed conditions.

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COUNCILMEMBER BAISA: Mr. Chair?

CHAIR MOLINA: Yes, Ms. Baisa.

COUNCILMEMBER BAISA: If I might I'd like to ask the applicant a question before we are done here?

CHAIR MOLINA: Okay, Mr. Jencks.

COUNCILMEMBER BAISA: Mr. Jencks, are we okay here, ready to go?

MR. JENCKS: I, I think we are. I just had one comment. I was discussing with Mr. Luna the issue of lineal descendents of the area. How you establish who those people are? What's the process for doing that? We have a public notice and it would seem to me the public notice provides the opportunity for those that have an interest to state their interest. I don't think we have to specify lineal descendents of the area.

CHAIR MOLINA: Member Johnson?

COUNCILMEMBER JOHNSON: No, and, and that was specific language that was requested by people who are lineal descendents of the area, and if we have to obtain that information for you, we'll be happy to do that. But basically those would be the individuals who asked to be put, I guess, on notice and they also came to a public hearing. So, those would be the individuals, and if there's anyone else out there, I'm not going to hold you to contacting them. But, I think, you know, even if you were to contact through a public noti..., notification just, you know, stating exactly what we've got here, I think that's fine. Doing it through publication is fine.

MR. JENCKS: Okay, so, if we do it through publication then can we delete lineal descendents of the area?

COUNCILMEMBER JOHNSON: No, I still want it left in.

MR. JENCKS: Okay.

CHAIR MOLINA: Okay. . . .(change tape, start 1B). . . Okay. Thank you, Mr. Jencks. All right, Members, any other discussion as to the proposed condition? I guess, Staff, can you go ahead and recite the latest addition to this from the Deputy Director, please?

COUNCILMEMBER BAISA: Oh, Lord.

MS. NAKATA: Okay, just the second sentence in the first paragraph will read as follows: "The CRPP shall consider access to specific sites to be preserved, the manner and method of preservation of sites, the appropriate protocol for visitation to cultural sites, and recognition of public access in

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CHAIR MOLINA: Okay. Deputy Director, can you clarify what final occupancy means in this context?

MS. SUYAMA: It would be more appropriate to say that either Certificate of Occupancy because in order for you to occupy a unit, like a Multi-Family unit or the Commercial units, you need to have a Certificate of Occupancy issued by the County of Maui. The reason the final subdivision approval isn't in.., included is because Single-Family Residential does not require certificate of occupancies.

CHAIR MOLINA: Okay. Members, any objections to deleting final and substituting the word certificate in its place?

COUNCIL MEMBERS: No objections.

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

CHAIR MOLINA: Okay. Can we do it as a friendly amendment then without a formal.

COUNCILMEMBER JOHNSON: Yes.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Friendly amendment.

CHAIR MOLINA: Okay. Staff, please make a note of that. We will delete "final" and instead insert the word "certificate" in its place.

MS. NAKATA: Or, or the phrase a certificate of?

COUNCILMEMBER JOHNSON: Occupancy.

MS. NAKATA: Thank you, Mr. Chair.

CHAIR MOLINA: Yes, yes, I'm sorry.

COUNCILMEMBER VICTORINO: Chair?

CHAIR MOLINA: Okay, moving on Members. If you can turn to Page 3 of your matrix, No. 3, Page, Page 3, Condition No. 3. There are apparently some minor revisions that was in the right most column. Is that okay with the Committee Members? It's done in ramseyered format. Any objections? Staff, do you want to provide additional comment?

MS. NAKATA: Yes, Mr. Chair. This was just. . .to try to clarify what, I believe, the intent was of the Committee when it reached consensus on this condition and it's related strictly to the last

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sentence. The proposed change would read: Should a traffic impact fee ordinance be adopted prior to the collection of this contribution, the applicable amount shall be the greater of the two. Such contributions or fees shall not be a substitution for any other traffic infrastructure requirements related to the Change in Zoning.

CHAIR MOLINA: Okay. Members, any comments as to what Staff is requesting?

COUNCILMEMBER VICTORINO: No.

CHAIR MOLINA: Or asking of? Okay, seeing none. We'll go ahead and let. . .we'll leave it as such, yeah, the minor revisions. Okay, very good, Members. I believe that's it for the time being. The Chair is going to call for a recess until 3:30 for Staff to make these needed changes and when we come back, I believe, we are ready to move on this and take action. Meeting in recess until 3:30. . . .(*gavel*). . .

RECESS: 3:18 p.m.

RECONVENE: 3:31 p.m.

CHAIR MOLINA: . . .(*gavel*). . . The recessed Land Use Committee meeting of October 18, 2007 is now back in session. Members, we are at a point now where the Chair is ready to offer a recommendation or to act on the bill. However, we did get some consideration for Member Baisa's proposed amendment yesterday related to Condition 16. So, I'm going to ask Member Baisa, I'll give her the floor again, related to Condition 16 a proposed amendment.

COUNCILMEMBER VICTORINO: What page?

COUNCILMEMBER BAISA: Thank you, Chair. Hopefully, we can do this quickly. There's nothing new added to what we looked at yesterday. Unfortunately, we had a very bare quorum yesterday and we couldn't take a, a real, you know, vote on it. We did, but we didn't have enough Members to really make a difference. So, I would like to propose this another time and see where it goes.

CHAIR MOLINA: Okay.

COUNCILMEMBER BAISA: And everyone has the condition in front of them. It essentially inserts a 90-day turn-a-round for when the Council receives the Sew..., Sewage Disposal Analysis with the comments to turn it around and comment and do whatever we need to do with it to pass it on before the Phase, to the Planning Commission before Phase II application.

CHAIR MOLINA: Okay. Members, do you have that or do you want Staff to repeat it for today?

COUNCILMEMBER VICTORINO: No.

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CHAIR MOLINA: If not, everybody all clear on what's being proposed by Member Baisa?

COUNCILMEMBER VICTORINO: Mr. Chair, is she making a motion on that or?

CHAIR MOLINA: Well, we, we haven't recognized, for a motion yet.

COUNCILMEMBER VICTORINO: Okay, just asking.

CHAIR MOLINA: Okay. The Chair is just checking if there any additional comments before the Chair ask Member Baisa if she's going to propose. . .put it in a motion.

COUNCILMEMBER BAISA: Mr. Chair, thank you. I would like to move that we approve this condition.

COUNCILMEMBER VICTORINO: Second.

CHAIR MOLINA: Okay, it's been motioned by Member Baisa, seconded by Member Victorino to amend Condition 16. Member Baisa, any additional comments?

COUNCILMEMBER BAISA: No, Chair, thank you.

CHAIR MOLINA: Okay. Any other discussion? Member Johnson.

COUNCILMEMBER JOHNSON: Even though we took a vote on this already, for the reasons that I outlined yesterday, I will not be supportive of this particular condition. I think that the condition as it stands now was very comprehensive because one of the requirements as has been noted numerous times by Corporation Counsel, one of the requirements is that we have everything before us now so that we know what we're considering. And yet, we will have no role in this other than to maybe make a comment. But the time for us to act and place conditions that are appropriate to this is at the time of the zoning, and if we don't have it, we can't put in the conditions. So, in the absence of it, I mean, to me, I, I really question whether this is, you know, a legal step or not. I, I would prefer to do what has been suggested numerous times by Mr. Hopper, which is have the information in front of us, and then we can put in the condition. The only reason that it would return to the County Council is that we don't have the information that by our own laws is required to be here. So, I'm not going to support something that basically undermines what the process is and basically takes out of our hands what should be within the Council's purview. So, I was willing to go along with it even as a stretch on the other condition, the way the current condition is worded, but I definitely will not go along with this. Thank you.

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

COUNCILMEMBER BAISA: Chair, if Member Johnson really feels strongly about that, as an alternative, I would be willing to propose that we keep the language in 16 the way it is. But I

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would still like to add that 90-day turn-around because that is what is the real meat of this. We are trying to add a timeline so that things will be done in an expeditious manner.

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

VICE-CHAIR PONTANILLA: Thank you. I, I could go along with that and I think part of our problem over here, you know, when, whenever we review anything, it's how long it takes us for, to review things. You know, this would set a time frame for us to, you know, get on the ball and, you know, make some decisions. Thank you.

CHAIR MOLINA: Okay. Hang on, hang on, Mr. Hopper. So, Member Baisa, are you going to restructure this amendment then if, as it relates to Member Johnson's concerns?

COUNCILMEMBER BAISA: If, if that is the feeling of the body, we could leave the condition as it is and just add another sentence.

CHAIR MOLINA: Okay. Can you state the sentence for Staff?

COUNCILMEMBER BAISA: Well, I can state it but it may need some wordsmithing from the help of our professionals. But I was thinking upon receipt, we just read, let me read the last line. "The Sewage Disposal Analysis, along with reviews and comments, shall be submitted to the Council for review and the project shall be subject to additional conditions or amendments by Council if warranted by Sewage Disposal Analysis. Upon receipt of the Sewage Disposal Analysis, along with reviews and comments, Council shall have 90 days to complete its review and determine conditions and amendments."

CHAIR MOLINA: Okay. Staff, you got that?

COUNCILMEMBER BAISA: I have it written down.

CHAIR MOLINA: Yeah.

UNIDENTIFIED SPEAKER: Why don't you give?

COUNCILMEMBER BAISA: I welcome Ms. Nakata's assistance if she can wordsmith it better.

CHAIR MOLINA: Okay. While Ms. Nakata is wordsmithing, I think Corporation Counsel had something to add to this.

MR. HOPPER: Mr. Chair, the only way I'm familiar with you to, after a Project District Phase I approval to add additional conditions is by a Change in Zoning to amend those conditions. And the only process I'm aware of for that is to go to the Planning Commissions and then come back before Council to take your action. Now, if you, if you review it and deem that there are no further conditions necessary, I could see 90 days being feasible because it would go to first

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reading, you know, and, and it would be an agenda item for a Committee. The Committee would say, you know, take action, and say no additional conditions necessary, recommendation to full Council, and then the item would be filed presumably.

However, if there's additional conditions, the only way I could see of adding additional conditions after you've taken action would be by a, an amendment to the conditions. And the only way that can be done, the, the law states that it has to be done in the same manner as, as the conditions were first placed on, which means a Change in Zoning, which can be Council-initiated, but still does have to go through the Planning Commission. So, I would note that and note that it may be difficult to do that within a 90-day time period unless there's some other way of amending the conditions or adding additional conditions, which I'm not aware of but as far as I understand it you would have to go through a, an amendment to the conditions.

CHAIR MOLINA: So, Mr. Hopper, are you saying that 90 days may not be enough then? You're looking at a longer. . .

MR. HOPPER: Perhaps something like 90 days to determine if new conditions are necessary. But then, of course, you know, it would, you know, putting the conditions on is, it's a legislative action. It's just like what you're doing right now. It's the same process. It's why I recommended you make the change now rather than, you know, do the conditions now, and get the information now, rather than do it later because it, it could potentially take some time to, to do that the way the law is written. And so, that's the difficulty I would, I would see with putting a time limit on that.

CHAIR MOLINA: Thank you, Mr. Hopper.

MS. NAKATA: Mr. Chair?

CHAIR MOLINA: Member Baisa.

COUNCILMEMBER BAISA: So, Mr. Chair.

CHAIR MOLINA: Hang on, hang on, Staff. Member Baisa?

COUNCILMEMBER BAISA: Oh, so, Mr. Chair, what I'm hearing then is that if we pay close attention to what our legal counsel is telling us, even as it is written without the time table there may be some concerns.

CHAIR MOLINA: Mr. Hopper?

MR. HOPPER: Well, it, it would be relatively unprecedented to have a project come back before the Council for additional conditions based on further information. I, I've said before I don't think that it's, that that's illegal. It's not something that you, that I'm familiar with. We'd have to determine how it would be done. It would presumably. . .it would be an item to Council. Council would first make the determination that it would or would not need to impose additional

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conditions after review. The report would be transmitted. You could determine if you wanted to add those additional conditions. However, if the decision is made that we need to add additional conditions, then you'd have to go to the, the Planning Commission through a public hearing, publish notice in the paper, give a certain amount of time, time, which I believe is, is 30 days notice before you can even have the hearing there, and then come to full Council for, for conditions. I, I'm not familiar with any other way that you can amend a Project District Phase I approval after it's granted. I, I think the Code is pretty specific on that.

COUNCILMEMBER BAISA: So, so, Mr. Chair. Mr. Hopper, just to try and unconfuse us without the legal minds, you feel comfortable with the condition the way it was without the time frame. If you feel comfortable without it, then that's the way it's gonna have to be.

MR. HOPPER: I, I, I don't think you can make 90 days if you added additional conditions. I don't think there'd be any way you could do that to actually act on the final conditions. I don't think there's any way. The way it was before, I think, that you could, that, that you could do it. I'm, I'm not saying that I would recommend that or think it's the best way to do it. But as far as that condition, I think it's enforceable and I think that it can work. With the time period, I don't see there's. . .there being any way that you could add additional conditions within 90 days. Maybe a greater time period but still that would be problematic.

COUNCILMEMBER BAISA: Mr. Chair?

CHAIR MOLINA: Member Baisa?

COUNCILMEMBER BAISA: I am a great, I have great respect for the Council's legal counsel. That's the reason we have them here. And if that is Mr. Hopper's recommendation then I would have no problem with withdrawing my motion.

CHAIR MOLINA: Okay. All right, Member Baisa will withdraw the motion to amend. Members, any objections?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay, so be it. Very good, Members. Now, let us come on down to the, I believe, that is it. Members, just to refresh your memories; it seems like ancient history . . .(laughter). . . what is currently on the floor is A BILL FOR AN ORDINANCE TO REPEAL ORDINANCE NO. 2171 AND TO ESTABLISH THE KIHEI-MAKENA PROJECT DISTRICT 9 (WAILEA 670) ZONING, CONDITIONAL ZONING, FOR APPROXIMATELY 670 ACRES SITUATED AT PAEAHU, PALAUEA, KEA..., KEAUHOU, MAUI, HAWAII. And back, I believe, in January, Staff, or was it March, it was moved by Vice-Chair Pontanilla, and seconded by Member Victorino. So, that's what we're considering here today.

And the Chair is gonna propose an additional amendment here. The motion is on the floor to add, to substitute the property description that is attached as an exhibit with the revised property

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MOTION CARRIED

ACTION: APPROVE amendment to the main motion.

CHAIR MOLINA: Now, we are back to the main motion. Members, I do realize we have some Members that are on some time constraints. I will give each of you one opportunity to speak, preferably if you can keep it under five minutes, if possible, because we may. . .we're gonna be losing a couple of Members. And I'm sorry to enforce this because of the time constraints, Members. So, I know, it seems rather odd or humorous to some Members. But anyway, the floor is open for your comments, Members, before we act on the bill. Member Johnson?

COUNCILMEMBER JOHNSON: I'll go first and I'll try and keep it short. You know, I, because I respect all the work that's been done on this particular measure and also because I respect that each one of us is going to have a different approach and a different way of dealing with things, I think that everyone, everyone has really exercised extreme patience in going through this very arduous process and for that I really thank the Members. I also thank the members of the public who have given their input, and particularly Staff, and also the Planning Department, and Corporation Counsel because we couldn't have crafted this many conditions without that assistance.

The one thing that I believe, you know, has always been at the back of my mind is we shouldn't be having to go through all of this if everything was in proper order. It makes it very difficult. And I respect Ms. Suyama because she has dealt with this for a long time. It is what it is. But because I don't believe it is a complete application because there are things that we shouldn't have these conditions, many of them we've inserted. Many of them I've inserted. They shouldn't even be here if everything was in proper order. And that's where I have my difficulty, Mr. Chair. There are some very good components of this, but I believe that irrespective of all those things in the same way that we amended a prior ordinance, at any time and any future Council, the developer or future owner of this particular property can come back and amend or ask for relief for the very conditions that we've put in just the same way that it was altered in the application before us.

So, for me, Mr. Chair, I'm not going to elaborate on it, but I believe that if everything was in order and was in accordance with the laws that we have, and particularly with regard to water, the sewage disposal issues, even OHA's comments criticizing State Historic Preservation Division, because we don't have certain things in front of us, all those things, if they'd been there, we wouldn't have had to spend all this time. But I'm willing to spend the time because on the other side if this passes, and there's no conditions, then where, where are we. So, even though many of the conditions, I believe, are, you know, very detailed, there's always that prospect and that possibility that if they are onerous the applicant will come back at some future time and ask for them to either be removed or amended, which has been done many times here in Maui County. And I, it just is what it is. I think that, for me, it's sad because I would like to

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support it but I don't believe it is a complete application. Therefore, I will be voting no. Thank you.

CHAIR MOLINA: Thank you, Member Johnson. Committee Members, any opportunity for discussion? The Chair will give you one last try to give your opinions.

COUNCILMEMBER BAISA: Mr. Chair?

CHAIR MOLINA: Member Baisa.

COUNCILMEMBER BAISA: Thank you, Chair. This is the moment that we have worked very hard for. It's been a long and tough review. And I know that every single Member has really spent the time and searched their souls and done a lot of homework and research and wrestled with both sides of this issue in trying to make the good decision. I personally feel that I've done that and I've been open. I have listened to folks on both sides of the aisle. I have tried very hard to be open-minded, and to do my homework, check things out, and the more I do, the more I'm convinced that I feel comfortable in doing what I'm going to do.

One of the things that I am very aware of, and I think many people overlook, is that there seems to be an idea that if we were to approve this that immediately there will be 1,400 homes and another 4,000 cars running up and down the road. I want everyone to realize and to keep in mind that we're talking about a minimum 20-year build out. If I'm lucky, I'll be around in 20 years, probably not. But my children and grandchildren and great grandchildren, I hope, will be here on Maui. I am very pleased with what we have been able to get in commitments from the applicant. Of course, everybody says we should ask for more. But I think that we have done an incredible job and that the applicant has worked with us very, very well in trying to find compromise and to bring to the table mitigation. Of course, none of us who are keiki o ka aina wanna give up anything. We would all love to see all of our open space left the way it is, all of our beaches, all of our vistas. We don't want anything changed, but I think those of us that have been here a while have come to realize that there must be some trade-offs because we need to live here and we all need to have jobs. The economy needs to be good and we have to have places to live and work. So, that's unfortunately some of the things we're trying to do and by crafting conditions we've tried to mitigate the impacts.

I am a big supporter of affordable housing. I realize that, you know, maybe we'd like to have it a little more affordable, maybe we'd like to have more, but we need to begin. The only way that we're ever going to solve this problem is to start. Every journey starts with the first step and I think this is a first step along with the others that the County is taking to try to make sure that we have affordable homes.

I don't particularly like all of the conditions, but I think we have done a good job and we covered many of the issues. I think what is bothering me and what Mem..., bothers Member Johnson, and we've talked about this a lot in Council, is that we spend, and we're not the first Council to do this. I remember when other major projects were going through and the many, many

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meetings, and all of the articles, and whatever about what was going on, and what was being crafted, and there's feelings that although that was done, there was no follow up. And so, I am hopeful, very, very hopeful that it's a new day and that we'd have new people in place, and because of the community impacts that we have suffered by not having follow up that we will do a better job. And I wanna tell you and everybody else that as long as there is breath in this body and that I don't have Alzheimer's or whatever it is that comes with old age, I'm going to be keeping an eye out for what happens. And I think we need to hold people's feet to the fire. If you say you're gonna do this, you better do it. And I think it's our job to make sure it gets done. You, you know, it's not just to sit here and craft conditions, good bye now, happy, happy building to you. I think that we need to be a part of making sure that things happen and I certainly would like to be a part of that. And so, Chair, I will be supporting the project.

CHAIR MOLINA: Thank you, Member Baisa. Any, anyone else who would like to have their say? Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you very much. And I, I think just to share a thought right off the bat. Mr. Chairman, there's gotta be a better way.

COUNCILMEMBER BAISA: Amen.

CHAIR MOLINA: Totally agree.

COUNCILMEMBER BAISA: Amen.

COUNCILMEMBER MATEO: Chairman, for myself, this was indeed a very difficult decision for, for me to make. It's a difficult decision because I have never supported golf courses and I have never supported high end development on this island. I don't think they're necessary. I don't think they're needed nor do I think it is wanted by our communities.

This project, however, Chairman, is the first test. A first test that this body, or the former Council, anyhow, worked hard for two years in crafting and creating a Residential Workforce Housing Policy that this Council and this County had the opportunity to provide for our people. Seven hundred affordable units is nothing to sneeze at. I don't remember the last time one developer helped to create this many affordable units. And yes, it is a long term build out. But nonetheless, we will be getting initial upfront and there's 450 affordable units that will be provided within the development project itself.

Chairman, I will be supporting this project. I need to validate the Residential Workforce Housing Policy that the Members of prior Councils and the Members of this Council supports. And without this validation, I believe the efforts and the energies and the participation by hundreds and hundreds of people throughout this County would have been for nothing. I believe in our people and I believe they deserve the opportunity to rent, and the opportunity to own, and this is the beginning of that opportunity. We look at a project of this size and we look at how costly it is for these million dollar homes. The reality is somebody's gotta pay for the affordable

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units. And if by allowing 700 market units to be built that will provide for the 700 affordables then I'm willing to give it that chance.

Again, Chairman, this has been a real difficult one for myself, and I just, I just hope that from the last number of meetings that we have, and I respect everybody's opinions, but I was hoping that as we chartered the conditions, I was hoping that the project became more palatable, and it became a little more acceptable so we could start to move on. And it's just the, the added condition after condition after condition that may or may not be, be worth the effort. But the fact is that we spent a hell of a lot of time trying to craft positions. You, you know, and, and for me, it's like the conditions was suppose to enhance the project so that it will be an advantage for our people not to stop the development project from moving forward. And I'm hoping that, that was, you know, not the intent of all the conditions because some of the conditions are really good. Some I still toil over. But at this point, Chairman, I thank you for the opportunity and I will be supporting this project. Thank you, Chairman.

CHAIR MOLINA: Thank you, Mr. Mateo. Any other Members that would like to give comment before the Chair will reserve the. . .if no one else would like to say anything the Chair would like to make his comments and. . .okay. Mr. Victorino?

COUNCILMEMBER VICTORINO: You know, Mr. Chair, first of all this has been a very enlightening experience for me being a freshman, going through the process. This is the first major development that we've brought forth in this term with the affordable component as part of it. Also, probably the first major development for which our new Water Ordinance will be a part of; the first major development for which issues of various other agencies, Preservation Plan, historical, cultural, and biological are all part of it. And you know, it's been a toiling experience. But I wanna thank all the public as well as all our experts from all parts of our community who've come forward and have given their manao, giving me the ability to make a decision as hard as it may be.

But more importantly, I want this to be put on the record to the developer and all future developers . . .(change tape, start 2A). . . This is a template. If you're not gonna have your act together in the future don't even come to see us. It better be ready to go. Follow the letter of the law. Arguably there are times when the law has changed and amendments and ordinances and other things have changed it. But this conditions that we've put forth is because a lot of, a lot of things that were suppose to have been done, weren't done. And I'm not going to put blame on anybody because sometimes it may have been agencies in the State. It may have been agencies, our Planning Department, whoever, all part of the picture. But I think the developer has shown his willingness to make the changes that made this, this whole project a part of what we need to have in our community.

Twenty year build out is a long time. Member Baisa said she don't know if she'll be around. None of us will know if we'll be around 20 years from now. But I hope when this is all said and done that these developers don't come back and try to see another Council. But if I'm still around, I will never change these, these conditions they brought forth. They, they going live

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with it. But if I'm not here, I hope that the record will show that I said, please do not change the conditions we put forward. You know, they were put there for a reason. And many Councilors, along with the community, wanted those conditions put in. And I think they're fair conditions overall. Maybe a couple still, I might have a challenge with. But the bottom line is this is the first test. This is the first vote. This is the first time that this County can be the shining star within the State if done right and the developer puts forth what they had promised us and not back out later on. This could be the benchmark for which all other projects, not only in this County, but within the State, could be done in the future. And the affordable housing rentals, and all the other things we put in, the parks, and all the other ave..., avenues we've asked. The cultural, set, set, setback, the easements, all what he's agreed upon, I hope they will not back off of because if I have any breath left in me in the future and they did, I'll come back and work as hard as possible not to allow them to move forward.

So, Mr. Chair, I will support this. I will support this but I want the record to show that I'm gonna watch with all my, with all my eyes and ears, to make sure that this project is done the way it's been crafted, and that the people of Maui County, our keiki o ka aina, will be the beneficiaries. So, my grandchildren 25 years from now will say, papa, you did a good job, and we thank you. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Mr. Victorino. Before the Chair makes his comments, the Chair recognizes Chairman Hokama to our proceedings this afternoon.

COUNCILMEMBER HOKAMA: Thank you, Chairman. If you would allow me a, a few comments?

CHAIR MOLINA: Okay. Chair, before you walked in, as the Chair of this Committee, I set parameters to all the Members, once to the motion, no more than five minutes because we will lose a couple of Members. If you can proceed, Mr. Chairman.

COUNCILMEMBER HOKAMA: Thank you again, Mr. Chairman. First, I wanna express my appreciation to the Committee to reach this point in the process. Obviously, you and the Committee have worked very hard, too many days, too many hours, Mr. Chairman. And I, so, I extend my appreciation to you and the Members.

And I have had an opportunity to see many requests, applications come forward, and I can tell you this afternoon, it is my position not to support this project. I think one of the main factors for me that is not debatable is our water situation on this island. And I am very sensitive to water, particularly with our situation on Lanai with just one aquifer and one water source for one whole island. And although we have still pending a water policy before the Council, I think what the Water Resources Committee has shown us through their efforts and the statistics of pumpage or over pumpage of capacity, it creates a major concern for me because if there's no water for the high end market development, there's definitely no water for the affordables.

I am not a supporter of allowing private systems, whether it be water, sewer, electrical, in general. We assess our residents, those that are on our systems, the rates and fees to build in

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excess capacity so that when we do have the add-ons in the future, we hopefully can reduce or keep those fees stable without increasing it to pay for the improvements necessary for us to maintain the public's systems.

Again, Mr. Chairman, you know, I've, I've been listening to the, you and the Members' discussion, the, the many debates about why we should do certain things. And I can tell you, Mr. Chairman, I have great concern about the areas of the Condition of Zoning that's before this, with this approval. I am in full support of some of the conditions that sets the parameters of what legislation is suppose to do to set up the policies. I have concerns when our conditions, in my view, tend to become part of the Administrative process or what I believe should be the Administrative branches need to implement for us and for us to maintain and keep our role of oversight responsibilities.

Again, Mr. Chairman, you know, for me, this is a very low priority request. Members, I think, there is, in my opinion, other things that I believe has higher priority and is more meaningful for the County where we are regarding economic development, sustainability, and the need to balance it with our environment. I think what we have learned through comments or lack of comments whether it be from OHA. We've heard about the issue of title for certain groups of people, whether it be with Royal Patents, title guarantees, deeds. It is still, for me, issues that has merit and that we need to come to a final resolution on. But at this point, Mr. Chairman, I personally can wait for this development to reach an approval and to be on the books for build-out because my concern is still yet, we talk about sustainability, but do we try to create the policies and put in place projects that will support a sustainable direction that we want this County to go. I would love to see this project be able to show that our people of this island can stay and work on this island and still not have to travel Oahu and have all our Oahu neighbors come here to do our projects on this island. Something is wrong with how we as a State maybe are approaching it. And you have the same information that we all have, Mr. Chairman. We just got the report, statewide report, by, I believe, the building industries. And in general, the overwhelming major of statewide residents believe this State is going in the wrong direction. I have, you know, very pointed areas of my disagreement with this applicant's application, Mr. Chairman, but I will honor your parameters of discussion this afternoon, and I thank you for my opportunity.

CHAIR MOLINA: Thank you, Chairman. Mr. Pontanilla.

VICE-CHAIR PONTANILLA: Thank you, Chairman. Just short comments. I, I know we started this particular process over a year. We've put in many long hours. When I look at the conditions that we have set for this one particular project--over 30. Those 30 conditions were agreements that we all made that were at this meeting at that time. Yes, we, we had some issues in regards to water, but I do attend the Committee meetings in regards to our Central Maui Water Use and Development Plan update and there are strategies in trying to meet the, the requirements for this County. It's not only Central Maui but Upcountry.

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When I look at a project, I also look at what's coming down the line here in Maui County, the State of Hawaii. We talk about traffic, you know, when you look at what is being conditioned on this particular developer, he's going to be extending that four-lane highway from Kilohana towards the entrance of Wailea development. In our community plan for South Maui, they talk about traffic improvements before any development comes about. And when you look at the, the planning that has been done by the State of Hawaii, and now what this developer is going to be providing, the roadway, according to the community plan, when you look at coming from Puunene towards Kihei, you're gonna have a brand new four-lane highway. Yes, we still need to do some work on Piilani Highway. And the reason why it's a four-lane highway is because of developments within the Wailea-South Maui area that created that four-lane. You know everybody talk about how it was with a two-lane highway. With this four-lane, although many people talk about it, it's not a standard four-lane, but it still moves traffic, and it moves it well.

Wastewater. We all talk about wastewater utilizing facilities that we have. In talking to the Wastewater Division, the trend now is individual wastewater treatment plants and I believe in that. As far as the cultural sites, the condition that we had set forth this afternoon will provide some clarity as far as how do we preserve our cultural sites at this particular project.

So, for me, Chairman, you know, it, it's, it's a difficult decision that we all gonna be making this afternoon and this is not the first one. You know, I've, I've had difficult projects that came about and, and, and, and, for me, it was basically trying to provide affordable housing for this County of Maui. And one project in my mind that really hurts all the time is when we were trying to provide affordable housing in Lahaina. As you know, and you were sitting at that time, that we didn't have enough support to provide that affordable housing. Now, we look at this particular development, we're looking at 700 affordable housing units. And, and like Member Mateo said, you know, this is a real test for our Workforce Housing Policy and we'll see if it works.

Yes, we had our first reading on the Water Bill. We still haven't come to the second and final. But with the Water Bill, I, I am sure it's going to provide some clarity for developers in regards to further developing this island. Just show me the water before you, you start building. So, Chairman, I really thank you for dealing the process. I, I, I know you had sleepless nights. But then again, you know, that's what we are elected to do. So, thank you very much, Chairman.

CHAIR MOLINA: Thank you, Mr. Pontanilla.

COUNCILMEMBER MEDEIROS: Mr. Chair?

CHAIR MOLINA: Mr. Medeiros?

COUNCILMEMBER MEDEIROS: Yeah, mahalo, Mr. Chairman. You know, I wanna echo what Member Mateo said. There, there has to be a better way of doing this process. And in my thinking of it, I wish there was a way where we first vote a project up or down, and if it's successful then do the conditions. Because to me, if we spent 20 plus meetings, and uncountable hours, and, and testimonies, and public hearings, and then at the end the project is voted down,

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what have we done, you know, for the public as far as taxpayer's money and assets? There has to be a better way of doing this. To take this much time to discuss and deliberate over one project seems to be, in my opinion, just a, a, a better way should be gotten, or we should be able to come up with a better way of doing this. But being that this is the process that we have to go through then it requires what we did -- lots of hours of work in the Committee. And, Mr. Chair, I echo Member Pontanilla's sentiments. I appreciate your leadership in this process because it has been long. It has been very testing on everybody but you have shown the leadership and as the Chairman to guide this process along.

My concerns on, you know, this project like others have expressed is that, you know, I'm not excited about another golf course being that I'm not a golfer, but I'm sure there's a lot of people that out there that golf. But I, I think we have enough golf courses on our island and in our County. But in the same regard, I understand that the golf course is the value asset that people will buy the high-end properties and, and homes and exchange for that those are the properties that subsidize the affordable housing because you cannot build affordable housing and sell it for what is decided by the County at those prices. There's no way of being able to fund that at that, those prices. So something or someone has to subsidize the housing. And, and, and projects, it, it's the market value properties and homes.

The other thing is what also concerned me and, you know, I got many calls as many of you probably did, is the land ownership and title, as was mentioned by Council Chair Hokama brought to our attention was the Royal Patents, land, you know, land tenure concerns, linear descendents. That's all, all very important to me. But in my inquiry with Corporation Counsel, I said is there a condition that we can place on this that would address this concern? And the response I got was that, that concerns or questions of ownership has to go to court. This is not the body that can decide on land tenure, land ownership, and so forth. So, it didn't leave us with very much to do as far as a condition.

Another concern of mine was water, like everybody else. We have heard about the condition and the crisis we're in with water. But we also have heard that the applicant was going to develop their own water system. And in listening to our Water Department, they seemingly didn't have any concern about a project developing their own water system. It took the burden off of them to supply the water. And likewise in wastewater. Our Wastewater Division promoted to us the development of private wastewater systems that seem to be the trend throughout the nation.

Cultural sites are very important to me and hopefully our Cultural Preservation Plan will address that. But as the other Members have expressed this is very difficult. Coming in, you know, for the first time as a freshman, like Member Victorino and Baisa, and having to tackle this as one of our first projects in Land Use. And as we all can see, if we look to the side of us, and we see the eight binders, this didn't develop over the 11 months that we've been here. This has been developed over eight or more years. Why, you know, wasn't it addressed many years ago? But it's left for this Council to address it.

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And having been in public safety and, and public service for over 30 years, I'm appreciative that two acres will be provided for a fire station in the area. I, too, agree that this project will not pop up overnight. It will be a 20-year build out and hopefully within that time, you know, many of our concerns can be addressed. I think Member Pontanilla very eloquently said about the highway improvements. I think it's something that area badly needs and that, you know, the four-lane highway extension will certainly be an improvement for highway and traffic in that area. The 20-hour *[sic]*, 20-year build out will assist our working families who are in the trade industries. These are the people that have been calling and asking about affordable housing and hopefully we can provide that through this.

The applicant's contributions for education, parks, affordable housing, and highways is a significant one. It is difficult not to take that into consideration. So with all of this said by all of the Members, Mr. Chairman, it is a difficult decision for all of us. And unless we make a decision, and hopefully it has been an informed decision with the all the information we have gotten, that we have done it in good conscious, and as an informed decision. So having said all of that about my concerns and about what I think are the pluses for the project and the applicant, I will be supporting this vote. Thank you, Mr. Chairman.

CHAIR MOLINA: Okay, thank you. Thank you, Mr. Medeiros. Well, Members, all of you have said a lot of what I was gonna say so I'll try and condense my remarks 'cause I do realize we have one Member that has to catch a flight. But I'll start simply by saying thank you to all of you, Members, even to the applicant. It's been a heck of a process. I don't know how we're still standing here folks. To the Committee Staff, Ms. Nakata, Ms. Frias. We do all the walaau, all the talking. They had to do the writing and to keep up with us. That is an immense responsibility. Corporation Counsel and Planning Department, thank you for being here.

For me, it's always been about how do we stop our young families from having to move elsewhere. We're losing so many young families off this island, you know. You go to the mainland, you know, for example, you go to Nevada or California; you see half of Hawaii up there and a lot of Maui people. And it's because of the cost of housing and lack of opportunities, especially those of our kamaaina family, our younger generations. These are the people that are making up the critical workforce occupations of this island as it continues to grow. Those that are in the police, the fire, teachers, you know, visitor industry, and other occupations. We need to keep that in mind. What do we trade off if we lose these people, you know, what are we going to lose as a community for the long-term when many of us become the seniors, the kupuna? What are we gonna do then? Who's gonna help us, you know? And if these people are not here, we may be in trouble as a community.

I believe there's the necessary safeguards that have been put in to this application. And I know we've been criticized for taking so long but that's the process folks. This was a very large application. All of you have been very passionate in each of your own ways. And wanna thank, you know, those of you who endured the process over the long-term who made yourselves available for the majority of these meetings. I wanna thank you especially for being here and lending your thoughts. We have to make sure that this project will be the template or flagship,

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ACTION: Recommending **FIRST READING** of revised proposed bill entitled “**A BILL FOR AN ORDINANCE TO REPEAL ORDINANCE NO. 2171 (1992) AND TO ESTABLISH KIHAI-MAKENA PROJECT DISTRICT 9 (WAILEA 670) ZONING (CONDITIONAL ZONING), FOR APPROXIMATELY 670 ACRES SITUATED AT PAEAHU, PALAUEA, KEAUHOU, MAUI, HAWAII**”; and **RECORDATION** of unilateral agreement.

CHAIR MOLINA: Okay, for the record, we have two noes, six ayes, Mateo, Baisa, Medeiros, Pontanilla, Victorino, Molina. One excusal, Member Anderson. Staff, do we need to incorp..., incorporate the filing of the communication into this motion or shall we do it separately? Can we do it? As well, Members, any objections to incorporating the filing of the communication?

COUNCILMEMBER BAISA: None.

COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: MA).

CHAIR MOLINA: Okay, so be it.

ACTION: Recommending **FILING** of communication.

CHAIR MOLINA: All right, Members, the vote has been taken, 6-2. The measure passes. This will go on to the Council for first reading. Most likely we're looking at late, the second meeting in December 'cause the Committee Report is quite immense. I don't believe Staff will be able to complete the Committee Report by the December 7th meeting. So, we'd just like to share that. So, thank you again, Members. It is 4:27, the Chair . . . Committee Secretary, do we have the okay to call it meeting adjourned?

MS. FRIAS: Yes, Mr. Chair.

CHAIR MOLINA: Meeting adjourned, Members. Have a Happy Thanksgiving. . . .(gavel). . .

ADJOURN: 4:24 p.m.

APPROVED:



MICHAEL J. MOLINA, Chair
Land Use Committee

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CERTIFICATE

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

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


Delfey Fernandez