

LAND USE COMMITTEE

Council of the County of Maui

MINUTES

August 8, 2007

Council Chamber

RECONVENE: 1:34 p.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Joseph Pontanilla, Vice-Chair
Councilmember Michelle Anderson, Member
Councilmember Gladys C. Baisa, Member
Councilmember Jo Anne Johnson, Member (Arrive 1:10 p.m.; Leave 3:00 p.m.)
Councilmember Danny A. Mateo, Member
Councilmember Michael P. Victorino, Member

EXCUSED: Councilmember G. Riki Hokama, Member
Councilmember Bill Kauakea Medeiros, Member

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

ADMIN.: Colleen Suyama, Deputy Director, Department of Planning
Michael Miyamoto, Deputy Director, Department of Public Works
Vanessa Medeiros, Director, Department of Housing and Human Concerns
Patrick Matsui, Chief of Planning and Development, Department of Parks and Recreation
Eric Yamashige, Deputy Director, Department of Water Supply
James A. Giroux, Deputy Corporation Counsel, Department of the Corporation Counsel

OTHERS: Charles Jencks, Owner's Representative, Honua'ula Partners, LLC
Gwen Ohashi Hiraga, Principal, Munekiyo & Hiraga, Inc. (Applicant's entitlement consultant)
Barry Toyota, Vice President and Director, Wilson Okamoto Corporation
(Applicant's civil engineering consultant)
Aki Sinoto, Aki Sinoto Consulting (Applicant's archeologist)
John Ford, Program Director/Senior Biologist, SWCA Environmental Consultants
(Applicant's flora consultant)
B. Martin Luna, Esq., Carlsmith Ball, LLC (Applicant's attorney)
Melissa Prince
Additional attendees (15)

PRESS: Melissa Tanji, *The Maui News*
Akaku--Maui County Community Television, Inc.

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of the land under the TMK . . .um. . . under T..., under the TMK process it's just two different parcels.

CHAIR MOLINA: Okay. Staff will make note of that and we'll send out the question to Corporation Counsel for --

COUNCILMEMBER ANDERSON: Thank you, Chairman.

CHAIR MOLINA: --comment. Okay. Thank you, Member Anderson. Okay. Members, moving on Condition No. 5. If we could have Staff read the Planning Commission's recommendation and to, to follow that up I'd like to have the condition as I guess clarified by the Deputy Director of Planning. As, Members, you will take note it's been, seems to be quite considerable some changes that were made. So, Staff, if you can start first with the condition from the Planning Commission. No. 5.

MS. NAKATA: "That WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall provide housing within the project district for a range of consumer groups including those in the affordable and moderate housing groups as determined by the Department of Housing and Human Concerns. WCPT/GW Land Associates, LLC, shall also comply with the affordable housing requirements adopted by the County of Maui. An agreement shall be executed between WCPT/GW Land Associates, LLC, and the County of Maui stipulating the terms and conditions for the provision of housing prior to approval of any ministerial permits by the County of Maui."

CHAIR MOLINA: Okay. Thank you, Ms. Nakata. And, Members, I'd like to ask Ms. Nakata now to read the Deputy Director's comments with regards to the proposed condition.

MS. NAKATA: "WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall provide workforce housing in accordance with Chapter 2.96, Maui County Code, the Residential Workforce Housing Policy. Should any of the workforce housing be located off-site, the required 50 percent workforce housing shall be based on the total number of combined units for the off-site project and Kihei-Makena Project District 9."

CHAIR MOLINA: Okay. Staff, would make note that there was considerable language bracketed out of the Planning Commission's condition on No. 5. So, Staff will make note a bracket was placed before the word "housing" and a bracket was placed after the word "Maui". And then the underscored language was inserted to replace that. So just so everyone is clear on that. Deputy Planning Director Suyama, would you like to make comments? And after that I believe Mr. Victorino has a question.

MS. SUYAMA: When the original condition came up to the Council there was no workforce housing bill at that time. And through the discussion it became clear that the Council Committee, Committee wanted it to be subject to the workforce housing requirement. One of the things that the workforce housing states that is that the housing just needs to be within the comm..., community plan region. So, in other words, the developer is saying that while we were, you

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know, there were two things, we'll, we'll, we'll do it on-site if that's what Council wants but then they also wanted consideration of an off-site provision for part of the housing.

So, one of the things is that, you know, to ensure that there's going to be workforce housing in the project, the Department recommended that if they're going to take the option of off-site then it should be based upon the total units and not just the units that comes from the project district. In other words, if you're going to put 250 units off-site then you add that to the 1,400 units proposed and the 50 percent of that 1,400 units is what you would use as your commitment. So, to giving you the option of going off-site means that for that benefit of doing it off-site and not in, within the project you're actually providing more housing as, as a developer.

But that's one of the things that we ask for your consideration on. The other thing that was missed as part of our comments that wasn't included in the condition is that we wanted a time limit as to when the workforce housing agreement should be executed. And we were recommending at that time in our letter of July 3, 2007 that it be done prior to the filing of the Project District Phase II approval request, so that, in other words, you will have an agreement in place with the County as how you are going to provide the workforce housing.

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

COUNCILMEMBER VICTORINO: Okay. So, am I clear in understanding that the way this would work then if we have a 1,400-unit development and they decide to build 250, the sum total of all that would be 1,650?

MS. SUYAMA: Right. If they decide to --

COUNCILMEMBER VICTORINO: Yeah.

MS. SUYAMA: --to do 250 off-site?

COUNCILMEMBER VICTORINO: Yeah. So, of that. . . 1,650 now their obligation is 825.

MS. SUYAMA: That's correct.

COUNCILMEMBER VICTORINO: Okay. So that's how you did 'em. And, and again am I correct in saying it would stay all in the Kihei-Makena Project District 9? It cannot be built anywhere else?

MS. SUYAMA: Well, the way the workforce housing ordinance reads is that as long it's within the community plan region, which means the Kihei region, Kihei community plan area, you can put your housing anywhere. But one of the commitments in, or some of the early discussions was that it be within the project district. But if you just, you know, apply the, the workforce housing . . . um. . . language is unless there's a specific condition saying that it has to be within the project district they have the option of putting it outside of the project district.

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COUNCILMEMBER VICTORINO: So, this language that you're putting in here would mandate they stay within the project district?

MS. SUYAMA: That a portion of it will always be within the project district.

COUNCILMEMBER VICTORINO: Yeah. I'm not too clear. Yeah. Okay. I understand what you're saying a portion of but that portion has, has to be determined by us? Or who determines the portion? Because again if you get 850, again, I go back to 825, I want to make sure that 825 really should be built in the Kihei area for their, for that, for the people of Kihei. Building it somewhere else may be not real, real, really, in my mind. . .

MS. SUYAMA: The Code requires. . .

COUNCILMEMBER VICTORINO: Yeah.

MS. SUYAMA: The Code requires you to build it within Kihei.

COUNCILMEMBER VICTORINO: Okay. So it will stay in Kihei.

MS. SUYAMA: It will stay in Kihei.

COUNCILMEMBER VICTORINO: But anywhere in the Kihei-Makena area?

MS. SUYAMA: Anywhere within the Kihei-Makena area.

COUNCILMEMBER VICTORINO: Okay. And the, the, the other thing about the timeframe, the timeframe before the, you mentioned before the second phase started.

MS. SUYAMA: The project district there's three phases of approval.

COUNCILMEMBER VICTORINO: Right.

MS. SUYAMA: First phase, which is what the Council is now looking at is the enactment of the ordinance as well as changing the property to project district.

COUNCILMEMBER VICTORINO: Okay.

MS. SUYAMA: The second phase is where the land, the Planning Commission reviews the application and they look at the land use allocations for the project and they give Phase II approval. Under the Phase III Project District approval it's an administrative approval process in which the Department looks at the final project plans to make sure that it's in concert with the ordinance itself as well as the Project District Phase II approval. And based upon that then we approve the construction drawings or the subdivision drawings to go for the ministerial permits which is,

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through normally with the Public Works Department. Like if you need to get your subdivision approval or building permits filed that is, prior to doing that that's the Project District Phase III process.

COUNCILMEMBER VICTORINO: So, let me ask you this if we put a condition in on the timeframe now that these homes would be built before the others will be completed if you decide to move out of that area. In other words, they don't build it all in that 1,400 unit they build like you said 250 somewhere else, right, we could require that or any portion of that to be done before they're completed with their market, market . . . um. . . portion of their housing? We could require that? Could we add that in?

MS. SUYAMA: You could add that as a condition of, of the zoning.

COUNCILMEMBER VICTORINO: Okay.

MS. SUYAMA: Normally, what I understand how the, the, in the past, I'm not sure about currently.

COUNCILMEMBER VICTORINO: Uh-huh.

MS. SUYAMA: In the past what they, what they did is that if you were owed one affordable, you know, current, through the past administration, if you want to provide a market unit you have to provide the affordable. It's a one on one. That's how the agreements were written. But usually those details are written with the Department of Housing and Human Concerns where they come into a formal housing agreement with the developer that stipulates under what conditions and how you're going to provide the housing and what's the, the income brackets of the housing. So, there's an agreement that's executed at that level with the County of Maui. And what we're saying is that prior to coming in to Phase II approval you get that agreement worked out with the County so that when we come to the, to the Planning Commission we know exactly how you're going to provide that housing

COUNCILMEMBER VICTORINO: I just want to make sure that, you know, like in the past we have been, pardon, pardon the expression, burnt by other developers and not having their commitments fulfilled. So, whatever we decide and put in I want to make sure that for the overall project itself that affordable housing even though it's long whatever we decide that that is guaranteed to be built or the entitlement to that land for the County of Maui would be, be insured somehow. And I'll talk with the Chair about it but just because I want to make sure that, you know, I want to be fair to the developer but more importantly I don't want to see the backend of this where we get the short end of the stick.

MS. SUYAMA: You, you could do it as a Conditional Zoning. I believe in Kapalua Mauka they had to, they had to make the commitment before they can develop the Kapalua Mauka that a number of units had to be provided.

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COUNCILMEMBER VICTORINO: Okay. That's what I wanted. Thank you, Mr. Chair, I appreciate you. . .

CHAIR MOLINA: Okay. Thank you, Member Victorino. Mr. Mateo, as the creator of the Workforce Housing Policy. . .

COUNCILMEMBER MATEO: Oh, no, no, no.

CHAIR MOLINA: . . .I'd like to give you the floor and for any comments or questions for the Planning Department as well as the applicant. Mr. Mateo, you have the floor.

COUNCILMEMBER MATEO: Chairman, thank you very much. And I just wanted to start off by a comment regarding Deputy Suyama's . . .um. . . I guess interpretation of the off-site component. Because according to the policy itself it references the item or, or the units and I'm going to read this part it's 2.96.040 Residential Workforce Housing requirements B under 1 and 2, both for sale and for, for rent. And under these two categories it lists real specifically that these units can be built within the community plan area. It says nothing about building 250 on the off-site and having to again build the 250 on-site. That's called double dipping and this is not what this policy does.

In terms of guaranteeing, there is a timetable. Ms. Suyama, in policy it is called concurrency, one for one. That is the time restriction on the housing. So, I had a little difficulty in trying to understand the rationale coming from the Department in requiring the double dipped numbers. And, Chairman, when appropriate I would like to ask the developer to come forward and provide us information. I did make available to all of the Members the communication I got from Mr. Jencks when I asked him to clarify the affordables in terms of the . . .um. . . 250 units that was going to be initiated first. So, when appropriate I would like to ask the developer to come down and provide clarification for us.

CHAIR MOLINA: Okay. Members, any objections to having the applicant come up to respond to . . .*(inaudible)*. . .

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. Mr. Jencks?

MR. JENCKS: Thank you, Mr. Chair.

CHAIR MOLINA: Mr. Jencks?

COUNCILMEMBER MATEO: Wow, he get lei on.

COUNCILMEMBER ANDERSON: They all got ti leaves. The Chair has ti leaves. Where's our ti leaves?

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COUNCILMEMBER MATEO: Chairman?

CHAIR MOLINA: All right. Mr. Mateo?

COUNCILMEMBER MATEO: Chairman, thank you very much. Mr. Jencks, thank you very much for coming down.

MR. JENCKS: Thank you.

COUNCILMEMBER MATEO: I'm just going to ask you initially to provide us additional clarification of your letter to me dated July 30 regarding the affordable housing for your project because this particular communication cites the 250 affordable rental units as the start of the project commitment to affordables. Can you expand on it?

MR. JENCKS: Certainly. Thank you. Mr. Chair, if I may? First of all, I just want to say that this project to be in compliance with the community plan has to offer as, as, as the Deputy Director described a variety of housing products for different economic brackets. And that's, I mean we have to do that to be in compliance with the community plan. So, we, we, we always assumed that we would have an affordable component in the project. With regard to the 250 units, we, the partnership talked about the idea of getting affordable units built early on before we could even start any work in the project as a way to help with the affordable housing issues in Maui County.

So, we, as, as we discussed earlier in Committee, we do have land in North Kihei that we were thinking about doing 250-some odd affordable rentals in the brackets described in the Workforce Housing Bill that would, that could be under construction earlier then we could be underway within the project district area as a way to start . . . *(end tape, start 2B)*. . . idea that we would build those units and then credit for them against our affordable component in the project. Now, listening to the conversation if that's not, as I read the ordinance, that is allowable and something that we could accomplish to help the affordable housing inventory issue. If that's something that is not acceptable then we will just build all the affordable product in the project. Because it makes no sense to build something outside if you're not going to get credit for it.

COUNCILMEMBER MATEO: Yeah. Thank you, Mr. Jencks. And in your, your letter in referencing the 250 affordable units, you're, you're indicating that these units will go down to the 60 percent median income level? Did you check the workforce housing policy's requirement?

MR. JENCKS: That's an error on my part. We need to be in compliance with this ordinance and it goes down to . . .

COUNCILMEMBER MATEO: Fifty percent.

MR. JENCKS: Fifty percent. Yes. And it ratchets us up to 80 percent I think.

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COUNCILMEMBER MATEO: Yes. Thank you.

MR. JENCKS: So there's three different brackets as I recall so we would build 'em maybe four brackets that we would have to be in compliance. In order to get credit we'd have to do it per the ordinance.

COUNCILMEMBER MATEO: So, Mr. Jencks, then initially this is prior to your project starting?

MR. JENCKS: That's right.

COUNCILMEMBER MATEO: Prior to your project starting your affordable commitment is the construction of these 250 units?

MR. JENCKS: Correct.

COUNCILMEMBER MATEO: When the project actually starts then this is your on-site project. Because the policy refers to concurrency, I know you're building the 250 off-site, did you take a look or did you consider instead of starting your project with 250 market units right off the bat is it still going to be concurrent?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: I'm thinking of the answer, Mr. Chair. I'm trying to. . .okay, we start these affordable units early on before we start any work in the project. Two years later I start work on the project, I'm building product, I would want to build certainly 250 market rate units to help pay for the affordable units I've already built or that are underway nearing completion. But logically, Mr. Mateo, Phase I, Phase II application for the project will include not only a market segment but also an affordable segment because we have to plan in advance. Now, we may not start those affordable units in the project at the same time but they would be a part of that Phase II application. Does that answer your question?

COUNCILMEMBER MATEO: Okay. Let me ask, let me ask that question this way. And just, just a yes or no might, might make it real easy for me.

MR. JENCKS: I'll try.

COUNCILMEMBER MATEO: Okay. Thank you. The 250 units, this is being done not because the policy tells you you need to build 250 units upfront. This is a means of satisfying one of the County's needs in, in getting the affordable units. And you're going to be building it because you choose to build these 250 units off-site. When you actually start construction of your on-site project and the question is you're going to start by building your market homes because you have already built 250 affordable units. Yeah. So, when you go back to your project site, is it still going to be one for one or you're going to go ahead and build 250 market units because you have, in fact, already built the affordables?

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MR. JENCKS: I can't give you yes or no.

COUNCILMEMBER MATEO: Yeah. You can say yes I'm going to do it or no I'm not going to do it.

MR. JENCKS: As, as I see the 250 would be a one to one but in that sense no.

COUNCILMEMBER MATEO: Okay. Okay. So, we're going to get the 250 off-site and when you start your project actually you're going to start with the 250 --

MR. JENCKS: Market rent.

COUNCILMEMBER MATEO: --market, market homes. And your 250 market homes will take you how long I mean what is the phase that 250 will come about?

MR. JENCKS: How long would it take?

COUNCILMEMBER MATEO: Yeah. Is this all in, that's Phase I of your, your project?

MR. JENCKS: I would say Phase I is going to be probably over 400 units. So, a segment will be market and a segment will be affordable on-site.

COUNCILMEMBER MATEO: So, after you complete the 250 markets then it will become, you'll meet the concurrency of the policy requirement?

MR. JENCKS: Within the project area, absolutely.

COUNCILMEMBER MATEO: One for one. Okay. Chairman, I'll yield to the other Members at this point.

CHAIR MOLINA: Okay. Thank you, Member Mateo. Member Pontanilla followed by Member Anderson.

VICE-CHAIR PONTANILLA: Thank you. In regards to the 250 units off-site and what you just mentioned you're going to satisfy the medium [*sic*] income between 80 percent and 50 percent. One of the problems we've had in Kahului, Kahului Town Terrace was the problem in regards to some of the tenants in that particular project, although, they are, you know, when they first applied it was affordable units for that particular family. In time, some of the families or some of the renters got married, they got promoted, they got increase in wages, and they no longer fall between 80 percent and 50 percent medium [*sic*] income. The question that I have for you, I think Mr. Mateo touched on it in regards to the first units you're going to be building, what I'm hoping is that, I, I don't know what management company is going to manage this particular project but there is a check and balance in regards to if the criteria is being met. And, and in

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most cases, I know that some of these people that's going to be renting going to be all of sudden out of the 80 percent and 50 percent medium *[sic]* income bracket.

So, rather than displacing these people, I don't know how long it's going to take to create affordable units within the project area so that if and when these people are faced with that problem that they have someplace that they can go apply for affordable housing rather than now I got to go look for a rental outside of the community plan area. Can you comment on that and, and comment on the project as you build your market homes in the project itself?

MR. JENCKS: I think you, Council member, you bring up a really good, good point. And I, and I don't know how to answer, answer the, it wasn't a question but the statement with regard to how you manage the increasing income of the folks who rent at 50 percent then, then they're earning actually at 80 percent. I'm, I'm not even sure that's addressed in this, in this document. It might be addressed in the new, in the new rules that are coming out to enforce the Residential Workforce Housing Bill. But to go directly to your question with regard to where do people move up and out to? It's in our interest I think as a community and also as a builder to provide product for people to move up and into which is what is driven by this ordinance.

The, this ordinance requires that the, that the, the workforce housing agreement that we need to submit has to be approved for the phase or let's say it's for the Phase II area, it would have to be reviewed and approved prior to any building permits or subdivision approvals. And the Director of Housing and Human Concerns will tell us as, as defined in this ordinance what it is we're going to build. So, if, if the Department is, got heads up with regard to the need and demand at a price point or a demand sector whether it's 80 percent or 100 percent or 90, whatever it happens to be, they're going to drive. Because this bill says they're going drive what you're going to build and what you're going to sell it for. So that, and that's the best way to answer it. This bill provides the direction to do exactly what it is you just described in my opinion.

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

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

COUNCILMEMBER ANDERSON: Thank you, Mr. Chairman. First of all, Mr. Jencks, you did not always intend to have affordable housing in this project. I'd like to correct that statement. As a matter of fact, both times when it went before the Planning Commission, Commissioners were told that this was a high-end housing project not suitable for affordables. And the only reason affordables came into the picture is because it was a condition that the Planning Commission imposed on you. The original intention as it came to the Planning Commission in 2000 and 2001 was for second and third offshore homebuyers with the lots selling from \$2 million up. So, please don't, now that you have to do the affordable housing don't pretend that you always intended to do it.

For the 250 off-site houses that you're, or units that you're proposing it's my understanding that it's for special needs housing. Special needs means, you know, handicapped, maybe homeless

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resource center, maybe people with drug problems. Anyway, it's not intended for necessarily workforce people. So, you know, and, and of course who's going to argue that we need that housing but we have State funding, we have Federal funding, we have all kinds of non-profits, not only that, County funding for special needs housing. My concern is getting housing for the workforce. To get people off the road from having to commute from Upcountry, Central Maui, Haiku, wherever to go work in the hotels down in this region.

And so, I would much prefer to see all of the affordable housing built on-site and meant truly for the workforce. Let's get some of those people off the highway so they don't have to commute. We already know that Stan Franco and his group have been advocating to us, Mr. Chairman, to have all of the housing on-site. And I, myself, are 100 percent in support of that. And, and then the other thing, Mister, Mr. Jencks, is because those are the kind of, that's, you know, any project that we have had before us, Mr. Chairman, this is the project who can afford to subsidize housing for people who make, excuse me, under 100 percent of the median income. And I would venture to guess the housing that they are proposing 120 to 160 percent on-site, we're looking at 250 to 500 and-what is it-70,000, 60,000, something like that for affordable housing. That housing is not going to be sold to people who live here unless they already own a home and they want to go retire down in, in Wailea.

So, if we're really going to use this project and they're using affordable housing as a selling point they need to be building housing that's truly going to provide much needed housing for the working people of this County who, I will remind you, 67 percent of whom make 100 percent and below the, the median income. These are not special needs people, Mr. Chairman. These are our working residents who are commuting to the hotels and working two jobs to keep a roof over their family.

So, that's my feeling on that. And, Mr. Jencks, you know, you do have a commitment. You've made this commitment to us on several occasions that you would be building this out at 100 units per year. Now, I'm not going to hold you to that to the 250-what do you find funny about that?

MR. JENCKS: I'm just, I'm just talking about 100, 100 units a year. Okay. Go. I'm, I'm just trying to think how I, the context. Go ahead.

COUNCILMEMBER ANDERSON: You made that statement on many occasions and if you'd let, like me to pull up the minutes for you I would. And besides that the timing of all your traffic improvements are based on that. So, you know, you can't now say, you know, you're going to build 250 units in a year. Off-site I don't have a problem with that if that gets approved and accepted by this Body because North Kihei isn't even considered in your traffic impact analysis. I think, Mr. Chairman, that takes another analysis because Ohukai to Kaonoulu, they got just as much traffic up there if not more. In fact they do have more. They are way beyond carrying capacity in that region of South Maui. So, you know, if that's a proposal let's see the traffic impact analysis for that.

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CHAIR MOLINA: Okay. Member Anderson, can I have Mr. Jencks respond and give some comments to. . .

COUNCILMEMBER ANDERSON: Well, I'm going to ask him a question first.

CHAIR MOLINA: Okay. Okay. Proceed.

COUNCILMEMBER ANDERSON: I'm, I'm just laying the groundwork so he could understand why I'm asking the question. You already committed to 100 units per year. Your zoning, your Project District ordinance allows for ohana units. So, if you have let's say if you build 50 market priced houses and 50 affordable units and then the people who buy the market price housing all of 'em put in ohana units, how will that impact the number of affordables and how will that impact your total build out of 1,400 units?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: Is that the question?

CHAIR MOLINA: Yes. Okay. I believe it is.

COUNCILMEMBER ANDERSON: Sounds like it to me.

MR. JENCKS: Okay. The project district has a maximum unit count of 1,400 units. That includes the affordable component and the market rate component. If you buy a lot in the project and you elect, you build your home on the lot and then you elect to build an ohana then that takes up one of the 1,400 units. So, the ownership has to approve you building an ohana and I cannot regulate that ohana whether it's affordable or not.

COUNCILMEMBER ANDERSON: So wait a minute, you mean the, the ownership has to approve you building that ohana?

MR. JENCKS: That's right.

COUNCILMEMBER ANDERSON: What are you talking about?

MR. JENCKS: You're taking the. . .if I, if I, if I own the project and I have, I have zoning for 1,400 units and you build a house that's 1,399. If you want to build an ohana that's 1,398 on your property, I should be able to say whether you can build that ohana or not because you're taking a unit away from my maximum unit count. That counts against the maximum unit count.

COUNCILMEMBER ANDERSON: Right.

MR. JENCKS: So, I'm not going to be predisposed to allowing ohana units.

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COUNCILMEMBER ANDERSON: Well, then why is it in the Project District ordinance allowing it?

MR. JENCKS: It. . .I don't think it's specifically addressed. We have a maximum yield of 1,400 units --

COUNCILMEMBER ANDERSON: But, you know . . .*(sigh)*. . .

MR. JENCKS: --but. . .

COUNCILMEMBER ANDERSON: This was brought up at one of our previous meetings and I believe the, the answer at the time was, in fact, Mr. Yoshida so I can't remember if it was at the Planning Commission, excuse me, or at one of our previous meetings in this Land Use Committee. But you, the answer, yeah, it was the Planning Commission; somebody asked well how are you going to keep track. You know if the total build out 1,400 how are you going to keep track? And Mr. Yoshida said, well, we would have to keep track of it internally.

CHAIR MOLINA: Member Anderson, before you continue, Deputy Director Suyama would like to give a clarification with regards to the matter you and Mr. Jencks are discussing.

COUNCILMEMBER ANDERSON: Oh, that would be helpful. Thank you.

CHAIR MOLINA: Thank you. Deputy Director.

MS. SUYAMA: When we reviewed this we were, the Department was concerned about ohana units and that's why the enabling ordinance chapter, you know, the change in the, in Title 19 does not list ohana units as a permitted use. You know, because it would have to have been listed as a accessory use to the permitted residential, and we didn't put it in. The only way ohana units are built today is because there is a separate chapter that talks about accessory dwellings and it identifies the specific zoning districts that ohana or accessory dwellings are permitted. And project districts are not one of those districts. So, unless you change that accessory dwelling ordinance in the, in Title 19, ohana units would not be permitted on these properties.

COUNCILMEMBER ANDERSON: Do you know for a fact that it's not in the Project District ordinance? Because it was originally and I unfortunately was not at the meeting when this was passed or at least voted on six of the other members.

MS. SUYAMA: All right.

COUNCILMEMBER ANDERSON: It says accessory uses and structures. Accessory uses and structures located on the same lot under permitted uses, and incidental and customarily found in connection with the principal uses. So. . .

MS. SUYAMA: Right. But then in 19.08 there is no mention of, of accessory dwelling units. It's part of another chapter in the Code that allows ohana units.

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COUNCILMEMBER ANDERSON: What's 19.08, Ms. Suyama?

MS. SUYAMA: 19.08 is the residential district ordinance. So, that's your R-1, R-2, R-3 districts.

COUNCILMEMBER ANDERSON: Right.

MR. JENCKS: Mr. Chair.

CHAIR MOLINA: Hang on, Mr. Jencks. Member Anderson, are you --

COUNCILMEMBER ANDERSON: Well --

CHAIR MOLINA: --through with your questioning?

COUNCILMEMBER ANDERSON: --you know, the thing is about a project district is, you know, you write your own standards for the most part and often it will say, you know, it will quote like whatever is allowable under 19.08 and then adds all of this additional things that are not a permitted use in 19.08. So, it says the number of dwelling units that may be constructed in the Kihei-Makena Project District inclusive of accessory dwellings shall not exceed 1,400.

CHAIR MOLINA: Okay. Excuse me. Mr. Jencks, you wanted to add, is that the point you wanted to make?

MR. JENCKS: That's exactly what I was going to mention. It's in Section 19.90A.020B. That's exactly what it says.

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: Yeah, but then the question is are you going to prohibit people by CC&R's from building accessory dwellings so that you can get your full market build out?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: We certainly could. The other way of looking at it, at that is making sure we build all the affordable units we're supposed to build as well. Because an affordable unit if someone wins, builds an ohana on their property it's going to count against the potential affordable unit. I mean that's how I look at it.

COUNCILMEMBER ANDERSON: What do you mean count against it?

MR. JENCKS: Well, if, if --

COUNCILMEMBER ANDERSON: If they. . .

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MR. JENCKS: --I have a maximum, I have a maximum and it counts against that maximum.

COUNCILMEMBER ANDERSON: Yeah. Yeah. Well. . .

MR. JENCKS: And it, if I may, it doesn't help me . . .um. . . build, building an ohana on this property which is an additional dwelling unit by definition, doesn't help me reduce my overall cost either because it's, it's a freebie basically. It doesn't work to my bottomline at all in covering my cost and building infrastructure.

COUNCILMEMBER ANDERSON: Right. In other words, it's a freebie to the landowner that bought the lot --

MR. JENCKS: That's right.

COUNCILMEMBER ANDERSON: --and doesn't put any money in your pocket --

MR. JENCKS: That's right.

COUNCILMEMBER ANDERSON: --to add to your, your expenses for infrastructures.

MR. JENCKS: Right.

COUNCILMEMBER ANDERSON: So then I, I would suggest that we just take it out and not, not even allow for accessory dwellings so that we know for a fact. Because, you know, some of you Members aren't here long enough but I'll guarantee you there's no way there's ever going to be a count taken and anybody keeping track. You know and if it's, if, if somebody comes in five years down the road and wants to put in an ohana unit who's going to stop 'em if the project district allows it and especially if there's aren't 1,400 homes built there yet. I mean we can't even get departments to correctly count out parking spaces. I mean, you know, it's got to be tight upfront, Mr. Chairman. We can't rely, you know, that's somebody is going to implement this as intended five years down the road and when it's out of our hands totally.

CHAIR MOLINA: Okay. So noted, Member Anderson.

COUNCILMEMBER ANDERSON: So, would you have an objection to that, Mr. Jencks?

MR. JENCKS: No. I, I, you know, we, the discussion of ohanas is, is something we've tossed around quite a bit and within the context of the project and my feelings on it go way back. You can't plan for infrastructure; water, sewer, parks, traffic, if you have ohanas in your. . .you just cannot do it. There's great impotence of that in Maui County. We have, and some people will say, gee, they're good for the affordable component. Well, hey, you still can't. . .

COUNCILMEMBER ANDERSON: And they are.

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MR. JENCKS: They are but you can't plan for it. We have an affordable component in the project let's build that.

COUNCILMEMBER ANDERSON: Yeah.

MR. JENCKS: Then we know exactly what we're getting and how we plan for it.

COUNCILMEMBER ANDERSON: So, then you're not. . .

MR. JENCKS: I have no, look. . .

COUNCILMEMBER ANDERSON: No problem with taking that out?

MR. JENCKS: If you want to take that out that's fine with me.

COUNCILMEMBER ANDERSON: Okay. Because I, let's, you know, let's make it tight and so that there's no question down the road. You do have a permitted use for an accessory dwelling. I don't know how you're going to call it an accessory dwelling but since we're on the subject, Mr. Chairman, I'm just going to, if I can find it here, mention that-oh, here we go-for the accessory dwelling approved permitted uses there will be an accessory dwelling . . . God . . . for the golf course. A 1,500 square foot accessory dwelling for a caretakers unit.

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: And I don't have any objection to that. I don't, I don't know if accessory dwelling is the appropriate term. But so you don't have any objection to taking out that other section that permits accessory dwellings?

MR. JENCKS: Not at all. And frankly, a dwelling is a dwelling. 1,400 dwellings is 1,400 dwellings whether it's a caretakers unit or not.

COUNCILMEMBER ANDERSON: Yeah.

CHAIR MOLINA: Okay. Member Anderson and Mr. Jencks, just so the Chair can get his bearings straight here. We went from talking about the workforce housing policy and we jumped around to the off-site. So. . .

COUNCILMEMBER ANDERSON: Well, the reason I brought that up, Mr. Chairman --

CHAIR MOLINA: No, no. It's good.

COUNCILMEMBER ANDERSON: --is I think it's very pertinent to affordable housing.

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CHAIR MOLINA: Yeah. And, and I was going to ask, ask you if you would like to propose that as a separate condition then to take out the option of having any ohanas in the unit. The Chair is very open to that if that's something you would like to propose right now or at a later time.

COUNCILMEMBER ANDERSON: Yeah, I'd like to propose it now but I think we're going to have to go back and revisit the Project District ordinance 'cause that's where it --

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --lies. But I did want to mention that in the, in the Project District 9 language or description, Members, for the Kihei Community Plan it does say that the project should provide a mix of single-family and multi-family housing types for a range of consumer groups with an emphasis on community development consisting of single-family, zero lot line, multifamily units. It goes on about the commercial, village, mixed use, integrated with two golf courses and other recreational amenities. Public amenities should include community oriented parks integrated with bicycle blah, blah. Buffer zones between residential areas and the proposed Piilani Highway extension, a site for future public use should be provided in anticipation of need.

So, when this was conceived, Mr. Jencks, it was conceived that there would be a range of consumer groups within the project district. So, would you have any objection to having all 700 affordable housing or dwelling units within the project district?

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: No.

COUNCILMEMBER ANDERSON: You would not . . . including the rentals, the 100 percent and below?

MR. JENCKS: Let me put it this way. If we just roll back to complying with the Residential Workforce Housing Bill and you tell me that I have to build the units in the project then I will submit a workforce housing agreement and the Director of Housing and Human Concerns will tell me basically what I got to build.

COUNCILMEMBER ANDERSON: Well, I'm bringing up the language of your project district that's in the community plan and this, this is overriding everything even the workforce housing bill because your Change in Zoning request must comport with the policies already in the community plan.

MR. JENCKS: I agree.

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COUNCILMEMBER ANDERSON: And so, if you have no problem with that then I have no problem either, either because as I said who can better afford to build housing at 100 percent and below than this project. Thank you, Mr. Chairman.

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

COUNCILMEMBER MATEO: Chairman, thank you. Mr. Jencks, just to follow up with, with the apartment or the, the single-family, the 250 units that you're going to be building. Have you, have you thought of how the maintenance fees would be adjusted? Because if we're talking about 100 percent and below, one of the more difficult areas that our people with lesser incomes have to address is not only their rent but to keep up with the maintenance fees as well that could be prohibitive, you know, to a large extent. So, have you thought about how you would address that with this specific group?

MR. JENCKS: If we're talking rental housing, Mr. Mateo, it's included in that rental fee that's established by HUD.

COUNCILMEMBER MATEO: Okay. And for clarification purposes this is to follow up with Ms. Anderson's question. These rental units are, these, it is open rentals and not for any specific category of people like the elderly or special housing needs for handicapped. Or how, what is the target group?

MR. JENCKS: It's open rental housing for the market.

COUNCILMEMBER MATEO: Okay. So, it's not specific to one category.

MR. JENCKS: No. No.

COUNCILMEMBER MATEO: Okay. Thank you.

MR. JENCKS: In compliance with the, whatever this ordinance requires is what we'll do. Absolutely.

COUNCILMEMBER MATEO: Thank you. Thank you, Mr. Jencks. Mister, Mr. Chairman.

CHAIR MOLINA: Yes, Mr. Mateo?

COUNCILMEMBER MATEO: When the developer meets with the Department and they iron out all of the specifics in this unilateral agreement relative to housing, when does it come back to us for review?

CHAIR MOLINA: Staff, can you comment?

COUNCILMEMBER MATEO: Or does it come back to us?

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CHAIR MOLINA: You know it's segues into my request that I've made of Staff to call Director Medeiros to join us. I think she could add more clarity. I believe, Staff, is Director Medeiros on the way?

MS. NAGATA: Yes, she's on her way.

CHAIR MOLINA: Mr. Mateo, if you would like to await Director Medeiros. Otherwise we'll try our best to provide an answer for you with regards to your question. Hang on. Mr. Mateo, anything else?

COUNCILMEMBER MATEO: Thank you. I'm done. Thank you, Mr. Chair.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: I just wanted to verify because, you know, July 30th wasn't that many days ago. And in your July 30th letter you talked about special needs housing, 240 affordable ren..., rentals at 60 percent of the median. In the area previously discussed, which ...*(end of tape, start 3A)*... for special needs housing in North Kihei. So, now you've just told Mr. Mateo that it would be for anybody not specifically special needs people.

CHAIR MOLINA: Mr. Jencks?

MR. JENCKS: If I may just look at the letter, Mr. Chair, give me one second.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: You know, I, I am getting very conc..., confused and frustrated because I think we have a whole gamut of discussion on areas that I'm not sure. We talked about 700 units being built and all affordable homes in the same area then on the same token I hear something now about North Kihei. We've changed from time to time. I'm not sure where we're at. Could we have some consistency so that I understand and the public understands? We keep changing areas. Are we staying at the project area? Are we going to North Kihei as part of the project area? I am not certain of what we're doing. Can you please have somebody clarify it?

CHAIR MOLINA: Sure. Well, Mr. Victorino, all of this I believe in the Chair's opinion relates to Condition No. 5, which relates to the housing policy. And I believe some of the questions that have been asked are related to the condition.

COUNCILMEMBER VICTORINO: I'm not questioning the questions. I'm questioning are we putting all 700 together which I've heard Mr. Mateo indicate as what we wanted and Ms. Anderson indicates that. Then now I hear the question about the 240- or -50 units being in North Kihei that's not part of the, this, this project that we're referring to. So, I'm trying to ask for some

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consistency. Also, I heard from the Department, and I have no clarification about the double dipping, who made that determination about this 250? I have so many questions that just keep, just being --

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: --thrown to some other side. So, I think the public and I want to know, eh, where are we talking about? Are we going to stay all in this project? Is that what we're talking about? All of these are affordable rentals special needs all in this project or is part of it is going to be in North Kihei? And is that part of the, the, the affordable component? Are we double dipping as was brought up Member Mateo or it's going to be determined by the Department? I'm very confused at this time. And I apologize.

CHAIR MOLINA: No, no. No apologies necessary. When, when Member Anderson is completed her line of questioning you'll, you'll, the Chair will give you that option to ask Mr. Jencks that question and you can also submit questions to the Committee that we can seek answers out with regards to your concerns just to help clarify matters. So, rest assured, Mr. Victorino, we will do our best to I guess try to help you understand as to what's going on and to provide more clarity for you. So, after Member Anderson is done, I will yield the floor to you where you can pose those questions to Mr. Jencks. And if you like pose those questions to your fellow colleagues as well. Member Anderson?

COUNCILMEMBER ANDERSON: Mr. Victorino, you're not the only one confused. So, no shame. Did you find the letter, Mr. Jencks?

MR. JENCKS: Yes, I did, Ms. Anderson. And if I may, let me quote from the letter. This is in the third paragraph, "the project team has discussed the idea of starting early on the affordable housing requirements for the project by building 250 affordable rentals (60 percent of the median) in the area previously discussed for special needs housing in the North of Kihei." Previously discussed for special needs housing in North Kihei. Okay.

COUNCILMEMBER ANDERSON: Yeah.

MR. JENCKS: So, we're going to use the same area, actually, the special needs housing proposal was a five-acre parcel. This is a 13-acre parcel that we're going to use. It covers the same area. Special needs is out. This rental, affordable housing is in.

COUNCILMEMBER ANDERSON: Special needs is out.

MR. JENCKS: Yes.

COUNCILMEMBER ANDERSON: And, and they're out because you've already discussed this with the Housing Department or what's the reason? And, you know, and no offense to anybody that, that needs housing. So, you're going to put regular affordable housing in a light industrial area.

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MR. JENCKS: It's a permitted use.

COUNCILMEMBER ANDERSON: I understand it's a permitted use but I don't know that it's an optible [*sic*] optimal use especially if you're raising a family. Now, is there going to be a park there for those 250 houses? Is there going to be, you know, the, the sort of amenities that you would want in a residential community? And, and you've just committed earlier to having no problem putting all this, all these units in the project district. Correct?

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: Okay. I'll yield. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Anderson. And we do have Director Medeiros here with us. Mr. Victorino, the floor is open for your line of questioning.

COUNCILMEMBER VICTORINO: Okay. Well, maybe I'll, before I ask my questions maybe I should hear from the Department so that we have a better clarification, and then I can give my line of questioning at that point. So, maybe I'll allow Ms. Medeiros if that's okay, Mr. Chair?

CHAIR MOLINA: Okay. Thank you. Director Medeiros, you have the floor for comments on what's been discussed thus far and I believe Mr. Victorino may have some questions for you as well.

MS. MEDEIROS: Okay. I was monitoring as best as I could and I think, and I want to make sure that I'm understanding exactly what you're asking regarding the affordable housing for the project? Okay. And which part? 'Cause you had several different discussions going on so I want to make sure that I know what I'm talking about.

CHAIR MOLINA: Mr. Victorino. . .

COUNCILMEMBER VICTORINO: Thank you. You're not the only one. Well, because first of all we have a letter from Mister, Mr. Jencks to Mr. Mateo on July 30, 2007, stating that he'll build 250 affordable rentals at 60 percent of the medium [*sic*] income basically in the North Kihei area, which is not part of the project itself. Am I correct? That's what this letter said. Now, the other part of the conversation as you were, if you were following is first of all Ms. Suyama stated that this 250 if it's built off of the project site would be in addition to. In other words, now 14 plus 250 now we're talking 825. My colleague from Molokai came in and said no, no that's double dipping. You can't allow, you're not allowed to do that. And it should be, and I've heard this said a couple times, all 700 affordable rentals and the sales should be built in the district itself, in that project in 670.

So, what I'm trying to ascertain from you 'cause you're the one that's kind of going to come up with the final decision making as far as what happens once we approve this as far as the affordable component is concerned. Is all 700 going to be built down there or are we going to

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accept this 250? And not, no offense to Mr. Jencks or anybody. We have 250 built in North Kihei and now we're going to build 1,400 down in I guess the other part of Kihei down Makena side. I guess that's what I'm trying ascertain right now. The conversation went on and the questions were multiple. So, let's, let's start on your, your, your answer as far as the affordable component as far as this project is concerned.

CHAIR MOLINA: Okay. Director Medeiros, are you ready to respond with the. . .

MS. MEDEIROS: I, I think so.

CHAIR MOLINA: Good question.

MS. MEDEIROS: First of all, with respect to the project itself, the main, I would have to say the main project, you know, the Department obviously supports the provision of affordable housing and that's down pat. We certainly support the, that, that Chapter 2.96 should apply should this main project-I have to say main project so, so I know what we're talking about-be approved. The matter on which, where does the units get built certainly is, is a perplexing question because this question just came up with some other projects that we are looking at. And the Council is the experts, I have to say, in terms of developing the workforce housing. And this may be another area where either more clarification is needed or we need to go back to the intent.

My understanding is that the intent of the workforce housing would be that the affordable housing units would be built at the same site of the original development. I could be wrong but that seems to be my reading on it.

COUNCILMEMBER MATEO: Point of information, Chairman.

CHAIR MOLINA: Mr. Mateo?

COUNCILMEMBER MATEO: That's wrong.

MS. MEDEIROS: Okay.

COUNCILMEMBER MATEO: The intent of the body was to have it built within the project, within the project area or the community planned area not within the project site.

MS. MEDEIROS: Okay. So, not on the, okay, so not on the main project site?

COUNCILMEMBER MATEO: Correct.

MS. MEDEIROS: Okay. But in the community plan area?

COUNCILMEMBER MATEO: The community plan area. Correct.

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MS. MEDEIROS: Okay. And it's, and I just want clarification in this situation that you're talking about the developer is proposing to provide affordable housing in the community plan area?

COUNCILMEMBER VICTORINO: Yes.

MS. MEDEIROS: And this is where you have a problem with?

CHAIR MOLINA: Well, Mr. Victorino wanted more clarification on that. Hang on, Member Baisa, just for-Mr. Victorino, can you provide clarity to Director Medeiros --

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: --of why you're not clear and I'll go to Member Baisa.

COUNCILMEMBER VICTORINO: Again, I guess the question came up where I have heard that they had 700 units planned in the district, in that project, the main project, right? And now this 250 would be a secondary area, same project community plan, but it would be off-site of the main project. So, what I'm hearing from Mr. Mateo and he's saying (a) it should be, so long as it's built in the project community planned area then it would be okay that this 250-am I correct, Mr. Mateo-would be classified as part of the 700 that this would be required to put in if we, we were to approve this project?

COUNCILMEMBER MATEO: Yes.

COUNCILMEMBER VICTORINO: Okay. So, and does it make a difference, and that's why I was getting confused because I had heard you mention or I heard Ms. Anderson mention that the 700, and we've also been asked by others who've come before us to build all 700 in the same area, to keep it in that area and make all the affordable housing in that area. So, again, I was just trying to clarify what we're trying to get. So, the bottom line in this, if I'm correct, is 700 units if we approve this 1,400 unit project would be in the affordable so long as it's in the project community district?

UNIDENTIFIED SPEAKER: Community planned area.

MS. MEDEIROS: The community plan area.

COUNCILMEMBER VICTORINO: Community planned area. That's it. Okay.

MS. MEDEIROS: Right.

COUNCILMEMBER VICTORINO: So, if that's what the clarification is then I'm fine. I still haven't had the answer is where do we get the additional 250? How did the Department, and I guess that was Planning, come up with the additional 250 outside? Where did that come from? 'Cause you said that, Ms. Suyama, and I'm still curious how you came --

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CHAIR MOLINA: Planning Department.

COUNCILMEMBER VICTORINO: --to that determination.

MS. SUYAMA: Because in discussions with the applicant, they had mentioned of the North, North Kihei site in which they were going, and my understanding was that's where the 250 units were going to be. And because they were choosing that provision also and it was very unclear that's why we proposed that in the affordable condition that if they are going to place it off-site that it should be on, based upon the total count of units. Forget having the ability to do that rather than doing it all within the project district area.

COUNCILMEMBER VICTORINO: So, the explanation Mr. Mateo has come forth with now is that clearer to you that the 700 units as long as it's in the planned district area would be counted towards?

MS. SUYAMA: That's my understanding from Mr. Mateo. However, the Council when they made conditions also can go beyond that.

COUNCILMEMBER VICTORINO: That's fine. Yeah. But I just want to make sure we are all on the same page and I understand how this works. Thank you. Thank you, Mr. Mateo.

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

COUNCILMEMBER MATEO: Thank you, Mr. Victorino. For, for the Director I, I asked a question earlier because I just wasn't sure. When the developer sits with the Department and works out the, the affordable housing agreement does that come back to this Body for approval or is that just approved with the, with the Department?

MS. MEDEIROS: I believe that according to Chapter 2.96 it does not come back to the Council.

COUNCILMEMBER MATEO: Okay. So, prior to that point then we will just have the opportunity to be as rigid as we can in the affordable component before getting to the Department?

MS. MEDEIROS: We would certainly rely on, you know, all documented testimonies. And this is an area that we're starting to sort of discover with some of the developers that we're working with if they've had to go through a planning process or they've had to go through an SMA process they make statements that may not necessarily be brought forward when it comes time to do affordable housing agreements. So, we're taking the, the extra effort to make sure that we try to go back through, you know, all testimonies, all documentation. Primarily, to make sure that we understand correctly what the intent was, what the agreements were at, at least at these levels to make sure that we're doing things properly.

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COUNCILMEMBER MATEO: No, I, I do know that the, the policy itself does provide flexibility for the Director in terms of doing, doing the unilaterals with the developer. I was just concerned because this really is the policy's first test. And this is a test of major magnitude because of just the, the sheer size of 1,400 total units in, in one specific area. So, my, my question was just, you know, how much leeway is the Director going to allow in terms of communications with this Body so we're, we're assured that what has been represented is, in fact, what we will see on the final document.

MS. MEDEIROS: Uh-huh. Yeah. I, I can tell you that, you know, we do have other developers that are already working with us on their affordable housing agreements and it, it has not, it has not been a cakewalk for any of them. Again, we're, we're scrutinizing it not to be mean, facetious, or anything like that but we just want to make sure that we all clearly understand what it is that's being represented and what it is that's being provided. You know again we can certainly provide the information to you to make sure that we all have clarity. You know you tell us what you want. I mean you folks are the ones who did the ordinance. We're simply trying to implement it to the best of our ability.

COUNCILMEMBER MATEO: Thank you very much. Thank you, Chairman.

CHAIR MOLINA: Okay. Thank you, Mr. Mateo. I guess as a follow up to Mr. Mateo's questions, a question for Corporation Counsel now. You know Director Medeiros mentioned that they're, according to the Code they're not required to, and help me clarify my question, that they're not required to I guess send back to the Council a report, if you will, or the agreement under the Code. Could the Council or the Committee condition that it be done that the Administration do that?

MR. GIROUX: Uh, uh. . .

CHAIR MOLINA: I speak of the agreement. Am, am I correct, Director?

MS. MEDEIROS: I believe that was the question. . .

CHAIR MOLINA: Right.

MS. MEDEIROS: . . .as, as to whether or not the affordable housing agreement would need to come back to Council for approval.

CHAIR MOLINA: And according to the Code it doesn't. But could the Council or the Land Use Committee request or condition in this case?

MR. GIROUX: I guess within its abilities to create conditions of zoning that could be a possible --

CHAIR MOLINA: It could be considered as a condition?

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MR. GIROUX: --condition.

CHAIR MOLINA: Okay. Thank you, Mr. Giroux.

COUNCILMEMBER VICTORINO: Mr. Chair. Follow up. . . *(inaudible)*. . .

CHAIR MOLINA: Mr. Victorino.

COUNCILMEMBER VICTORINO: I, I have another, and I know this might sound kind of ambiguous question but the question now has been brought up about the 1,400 units and 700 being affordable, and now 250 being built off-site, right? But the original plan for this area was 1,400 lots, right, 1,400 units built there. So, if we build 1,400 there and we get 700 total with the 250 unless my math is incorrect isn't that a total of. . . 1,650 units being built in the project district? Now, I'm not saying built in the project but in the project district.

COUNCILMEMBER ANDERSON: Community plan district.

COUNCILMEMBER VICTORINO: Community plan district, okay. Community plan district, okay. So, now we're building 1,650 units. That's an interesting dilemma because we started with 1,400 and now we're up to 1,650 of which 700 were affordable, 60 percent, 50 percent under the 100 percent of the medium *[sic]* income. But my question now is, and again because this is a test case and I'm not disagreeing with Mr. Mateo we shouldn't double dip but also I'm saying maybe I don't agree because all of a sudden we have 1,650 units being built in the community plan district. Why now are we still only using 700? My math says that should be 825 if my math is correct.

CHAIR MOLINA: Okay.

COUNCILMEMBER VICTORINO: Go ahead, Ms. Baisa. I challenge. Go ahead.

CHAIR MOLINA: Well, before --

COUNCILMEMBER VICTORINO *(speaking off the mike)*: . . . *(Inaudible)*. . .

CHAIR MOLINA: --before I ask someone else. To the Chair's knowledge we're working with 1,400.

COUNCILMEMBER VICTORINO: Okay.

CHAIR MOLINA: At this point this issue of 1,650 that's not, you know, part of the conversation at least to, to my knowledge. But again that's the decision this Committee will have to make do we want to increase density in the community? You know that's something we'll have to wrestle with but my initial understanding of the affordable requirements was the 250 would be part of the 700 affordables.

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COUNCILMEMBER BAISA: Right.

CHAIR MOLINA: That's my understanding. Member Baisa, do you care to comment?

COUNCILMEMBER BAISA: Thank you for clarifying that for me. It was my impression that you're correct but Mr. Jencks in his eagerness to try and answer a question had written this letter on July 30th and very clearly said that this was an idea that his team was talking about that perhaps they could start, jump start the affordable housing, and show their good faith and their desire to provide it by doing 250 before doing anything else. But I don't see that as replacing or adding to the 700 but I, I see it as part of. And I just want to be sure that I'm correct because we seem to not be very clear. Maybe we should ask Mr. Jencks exactly what he's going to do.

CHAIR MOLINA: Mr. Jencks, do you care to respond? And again, Mr. Victorino, my, my understanding is we are work, the working number is 1,400 with 700 affordable. I was not aware of any increase in density for the project and the 250 would be part of the 700 that's required. Mr. Jencks?

MR. JENCKS: We don't need any increase in density. I know that's probably a shock. The, the 250 is part of the 700. It's a total of 1,400. And it's an idea to bring the units forward more, well, earlier than we would within the project district to help with the issue and the situation. But, Mr. Chair, if this condition simply reads comply with the workforce housing bill I think everybody is happy because the rule, the ordinance is very complete. It provides good direction. This is an idea we had. We have the land. We're in the process of subdividing and getting the civil drawings done. We could do this as a part of that workforce housing agreement working with the Director of Housing and Human Concerns.

COUNCILMEMBER VICTORINO: Mr. Chair?

CHAIR MOLINA: Mr. Victorino?

COUNCILMEMBER VICTORINO: Thank you, Mr. Jencks. I just wanted to make sure that was clear in everybody's mind because again as the conversation had moved back and forth we had heard different aspects. And so, I wanted the public as well as myself to be clear on that matter. So, we're talking 1,400 units whether in site A, site B, wherever that's it no more no less. Thank you very much. I appreciate that.

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

COUNCILMEMBER ANDERSON: Yeah. Just to clarify. Mr. Jencks, don't run away. So, should this Committee agree to the 250 off-site units that would reduce the density by 250 units at the project district site? Correct?

MR. JENCKS: Correct.

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COUNCILMEMBER ANDERSON: Making that now 1,150 units.

MR. JENCKS: If, if I may?

COUNCILMEMBER ANDERSON: Sure.

MR. JENCKS: Once again this is an idea we had.

COUNCILMEMBER ANDERSON: Right.

MR. JENCKS: We would, I'm here to tell you that this is something we could do. We own the land but once again it's a part of our proposal to the Department of Housing and Human Concerns. If they agree that this is a good idea, we will do it.

COUNCILMEMBER ANDERSON: Okay. So, and I think it depends on the Council too if they think it's a good idea. But, you know, originally this is back in December of '06 you gave us a site map for the location and is this the same location, Mr. Jencks, off Piilani? It looks to me like it will be built around the extension of Kaonoulu Street which will end up being the entry way or the terminus of the new Kihei-Upcountry road. Is that correct?

MR. JENCKS: Yes. The parcel you're looking at is a five-acre piece that was designated for special needs housing. We're going to be using a 13-acre piece, that entire quadrant of the property for the apartment project we're talking about today. But in the same location, same access, same quadrant of the property but a much larger piece of land.

COUNCILMEMBER ANDERSON: And so, have you done I guess the only, you're not going to need zoning because it's already light industrial I believe. Isn't it?

MR. JENCKS: It's community planned light industrial and zoned light industrial.

COUNCILMEMBER ANDERSON: And the zoning was to . . . was it Kaonoulu Ranch that got the zoning, the light industrial zoning there?

MR. JENCKS: Yes, in the mid-90s.

COUNCILMEMBER ANDERSON: And so, you bought the property for them, from them?

MR. JENCKS: That's correct.

COUNCILMEMBER ANDERSON: And so, has there been any, have you done any traffic impact on what 250 houses would, I mean, what kind of upgrade you're going to have to do for that?

MR. JENCKS: We will have to do a traffic impact assessment report for the State because both Piilani Highway and the road through the property is a State or State Highway. So, yes, that will be

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done. And the project is comprised of light industrial. These apartments if this is what we can, we can build would be great. So, yes, we will have to do that.

COUNCILMEMBER ANDERSON: Yeah. I, I, you know, I'm just going to state my preference, Mr. Chair, just 'cause they have this land and it's a convenient place to throw this 250 units. I would prefer to see it on the project site with all the amenities. It's hard for me to swallow putting people in the midst of light industrial to raise their families. No parks, no nothing. Have to cross a highway to get to anything. So, that's just my take on it.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Members, we will continue with Condition 5 I guess at a later point. Well, this is I guess the first pass through. And seeing some of your faces and eagerness I think it's time to take a break, Members. We shall be in recess until five minutes after the hour of 4 o'clock. Meeting in recess. . . .(gavel). . .

RECESS: 3:50 p.m.

RECONVENE: 4:16 p.m.

CHAIR MOLINA: . . .(gavel). . . The recessed Land Use Committee of July 25, 2007 is now back in session. It is 4:15 August 8th. Okay. Members, before we discuss the next condition, which is the proposed Condition No. 6, the Chair would like to get some input on or from you with regards to, if you turn to Page 11 of your matrix there are some conditions being proposed, additional conditions being proposed by the applicant. Namely condition with regards to civil defense No. 9 and near shore water. . . monitoring No. 12. Now, these are something in addition to what was not proposed by the Planning Commission or anyone else for that matter. The Chair would like to seek your input on it. Is this something the Committee would like to incorporate as additional conditions? The Chair is open to your comments on that. Member Pontanilla followed by Member Anderson.

VICE-CHAIR PONTANILLA: Thank you.

CHAIR MOLINA: You know what, Mr. Pontanilla, we'll have staff read the proposed condition just so the Members and the public have an understanding --

VICE-CHAIR PONTANILLA: Okay.

CHAIR MOLINA: --of what this is. Staff.

MS. NAKATA: The applicant's proposed Condition No. 9 "that WCPT/GW Land Associates, LLC, its successors and permitted assigns, shall participate in a pro-rata funding and construction of adequate civil defense measures as determined by the State and County Civil Defense agencies."

CHAIR MOLINA: Okay. Thank you, Staff. Mr. Pontanilla.

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VICE-CHAIR PONTANILLA: Thank you, Chair. As far as that particular item No. 9, I have no problems with it. Just as long as they work with the Department of, the State Department as well as our County Civil Defense Agency --

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

VICE-CHAIR PONTANILLA: --in providing this civil defense siren.

CHAIR MOLINA: Okay. Member Anderson?

COUNCILMEMBER ANDERSON: I was just going to say, Mr. Chair, it's an existing condition from the State Land Use Commission --

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --shall fund and construct adequate civil defense measures.

CHAIR MOLINA: All right. Let me ask. . .

COUNCILMEMBER ANDERSON: It's a little different then what they're saying because it says that they shall participate in the pro-rata funding and construction of adequate. And this, the State Land Use Commission says petitioner shall fund and construct adequate civil defense measures as determined by State and County of Maui civil defense agencies. So, I think that we should stick with the condition that's already running with the land.

CHAIR MOLINA: Okay. So, is, is it your thought that this condition may not be something to consider? I mean at this point to. . .

COUNCILMEMBER ANDERSON: No, I think we should have it, Mr. Chair, but the language --

CHAIR MOLINA: Okay. An adjustment to the language?

COUNCILMEMBER ANDERSON: --should be, should match the petition --

CHAIR MOLINA: Okay.

COUNCILMEMBER ANDERSON: --I mean the State Land Use Commission's condition.

CHAIR MOLINA: Okay. I'll, we'll consult with staff to I guess construct the proposed condition with the appropriate language that matches the State Land Use --

COUNCILMEMBER ANDERSON: Right.

CHAIR MOLINA: --Commission condition.

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COUNCILMEMBER ANDERSON: I think it's important, Chair, that we honor the conditions that currently run with the land as best as we can.

CHAIR MOLINA: Okay. Any objections to that, Members?

COUNCIL MEMBERS: No objections.

CHAIR MOLINA: Okay. We will, as ordered by the Committee we will do that. So, we have general consensus at this point for this proposed condition.

COUNCILMEMBER ANDERSON: And, and just so Staff will know, Mr. Chair, if I might? That is Condition No. 5 on the decision order and order of the 1994 State Land Use Commission DBA.

CHAIR MOLINA: Okay. Staff, can you make, can you make note of that Condition No. 5. Okay. Okay. I'd like to call upon the applicant just to respond to something from the Chair with, which relates to this proposed condition that you have made. Mr. Jencks, it's been brought to my attention that there is I guess a need to improve the radio infrastructure for our Police Department in the area in the South Maui region. Just something for you to consider would it be something that for you or for those that are part of this project to make some type of contribution towards upgrading the Police radio system in the area? And I know it's not a requirement but again I just would like to ask you to consider it. And if you could back to the Committee if you're not able to answer that today anything to-because my understanding is there is a need because the area is growing. And some of the infrastructure, our Police infrastructure is in need of some upgrades. And so, again, I would just throw that out to you for your consideration.

MR. JENCKS: If I may, Mr. Chair. I think that is within the, in the spirit and intent of this condition. So, absolutely.

CHAIR MOLINA: Okay. Thank you very much, Mr. Jencks. Member Anderson.

COUNCILMEMBER ANDERSON: Excuse me, Chair, could you be a little bit more specific about upgrades? I mean like an antenna, a transfer, transfer station or?

CHAIR MOLINA: Yeah. My, well, my understanding, it has, some has to do with the transfer station possibly an antenna. I wasn't given any exact specifics in talking to some of the Police personnel but actually it was on my own initiative. I sort of wanted to look at other areas that could need, use some improvement in terms of emergency or civil defense. So, it was sort of thought of on the fly on the Chair's part. So, you know, the applicant is agreeable to it. And I thought I'd present it to him as something to consider.

COUNCILMEMBER ANDERSON: Yeah. And so, I totally agree and because there's already a condition that they will not cause a need for public services and facilities. They have to pay for 'em. And so, I would just like to be specific as to what the upgrades --

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APPROVED:


MICHAEL J. MOLINA, Chair
Land Use Committee

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