

August 26, 2011

'11 AUG 26 48:53

MEMO TO: Don Couch, Chair  
Planning Committee

F R O M: Danny A. Mateo, Council Chair.

SUBJECT: **DOCUMENT TRANSMITTAL**

Please consider the attached document in connection with Item No. 21 on your Committee agenda.

cht

Attachment

**ATC MAKENA HOLDINGS, LLC**

1100 Alakea St. 27<sup>th</sup> Floor  
Honolulu, HI 96813

August 23, 2011

Council Chair Danny A. Mateo  
And Members of the Maui County Council  
County of Maui  
200 S. High Street  
Wailuku, HI 96793

Re: Response to Isaac Hall Letter dated August 11, 2011  
RE: Failure to Comply with Condition 32 of the  
Change in Zoning

Dear Chair Mateo and Members of the Maui County Council,

I am writing this letter to respond to the issues raised in Mr. Hall's letter dated August 11, 2011. In order to adequately address these items I have outline them in bullet points below:

- To clarify Mr. Hall's statement regarding Condition 31. The condition reads as follows:

*The developer shall construct a minimum of 60 new parking stalls at Maluaka Beach, including at least 10 at the north end, within one year of the issuance to the developer of any SMA permit by the Maui Planning Commission relating to a parcel or a portion thereof that is a subject of this Change in Zoning. Unless necessary to protect public safety or to comply with State or Federal law, the required parking stalls need not be asphalt surfaced. Development costs and land shall not satisfy park dedication requirements.*

Response: There has been no SMA permit issued for any parcel or portion thereof that was subject to the Change in Zoning. We are aware of this obligation and intend to comply.

- Condition 32 reads as follows:

*The developer shall develop an expansion of the beach park at the south end of Maluaka Beach, such that the beach park shall comprise at least 1.5 acres of land area for public use and beach access. The developer shall submit the necessary applications required for the expansion within six months of the approval of this Change in Zoning. The land area of the expansion of the existing park shall be applied as credit toward satisfying a portion of any applicable park dedication requirements.*

Response: On June 26, 2009, the prior developer submitted documentation regarding the expansion of the beach park to the County of Maui Department of Planning See Transmittal Letter Exhibit A, Planning Division ('Department'). See Exhibit 'A-1' depicting a sketch showing Easement P-1 attached. This was the location proposed by the prior developer. Further, the proposed location contains lands that were included in the Change in Zoning from HM (Hotel) to PK1 (Park) and from GC (Golf Course) and OS (Open Space) to PK1 (Park), specifically TMK 2-1-006:011 See Exhibit 'A-2'.

Mr. Danny Mateo, Chair  
and members of the Maui  
County Council  
Re: Response to Mr. Hall  
August 23, 2011  
Page 2 of 4

Response Continued: ATC Makena Holdings, LLC ('ATC') closed the acquisition transaction for the Makena Resort properties relating to the foreclosure action on August 27, 2010. ATC has met with the Department a number of times starting in November of 2010, and as recently as July 12, 2011. During those meetings the location of the expansion did not change. The delays in documenting the easement area were related to providing clarity as to what the Department would require for maintenance. ATC has requested sample documents to review relating to the Departments requirements, with no response to date. As such, ATC is preparing easement and maintenance agreements for the Department's review. It is anticipated those will be submitted on or before August 31, 2011.

- Makena Resort is impeding access. Condition 33 reads as follows:

*To the extent practicable, the developer shall provide, in perpetuity, traversable lateral shoreline access in the area between the shoreward boundary and the mauka boundary of the Makena Resort Area. Costs associated with this condition shall not satisfy park dedication requirements.*

Response: Shortly after acquisition, it was brought to ATC's attention that there were old 'No Trespassing' signs posted on trees nearby, as well as other signage that was not conducive to allowing access to the shoreline. (Note the signage had been in place for many years prior to ATC's involvement). Within days of being notified of this concern, the signs were removed. Since that time there has been a gate, but it was not locked, and people frequently walk through it to explore other shoreline areas of Makena. See attached photos in Exhibit 'B'. On receipt of this letter, although ATC is confident that the gate was not impeding access, the gate was removed. See Exhibit 'B'.

- Makena Resort has begun using the park for commercial activities

Response: There has been no change to the Makena Resort's longstanding use of the area for weddings, conventions, private dinners and beach activities.

- Makena Resort is proposing to expand the beach park at the north of the existing beach park and to leave the south side walled off from public use and enjoyment with a white picket gate closing the opening in the wall. Makena Resort is seeking County of Maui Parks Department approval to satisfy Condition 32 by locating the beach park expansion in an unsuitable location that has not undergone public review.

Response: ATC is proposing no change from the area submitted in 2009 by the prior developer and consistent with the Change in Zoning Exhibit A-1. See Exhibit 'C' and Exhibit 'C-1' depicting the park lands outlined in red. In fact, the public has actually had the benefit of utilizing this area for many years. As stated above the gate has been removed. Note: the people you see in the photo of Exhibit C-1 were coming from the other side of the gate.

Mr. Danny Mateo, Chair  
and members of the Maui  
County Council  
Re: Response to Mr. Hall  
August 23, 2011  
Page 3 of 4

- The proposed expansion would be located on lands that are not topographically suitable for a beach park, between the 20' wide trail that traverses the mauka side of the proposed expanded park and the beach

Response: Exhibits C and C-1 show that the area proposed is suitable for a beach park.

- The area is located closer to the Hotel and appears to be part of the Resort. Experience has shown that the more this land appears to be a seamless part of the hotel operations, as here, the less it will be used by Maui residents.

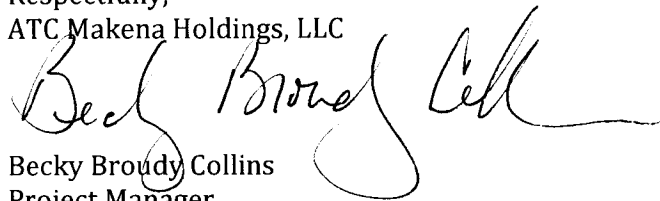
Response: To reiterate, the proposed expansion is located on the lands that were subject to the Zoning action and described above. The public parks are intended to be used by residents and visitors alike. The proposed area, located close to the beach and parking, it contains picnic areas, and is frequently used by both visitors and residents.

- An expansion to the south of the existing park would include land that is topographically similar. This land facilitates lateral shoreline access which leads to areas where significant historic and cultural sites and resources are located. Fishing is one of the traditional and cultural activities facilitated by this land.

Response: The proposed park is located to the south on lands as it was intended during the Change in Zoning. Lateral shoreline access, for fishing, or other cultural purposes has not been impeded.

ATC is happy to meet with the Council, or the appropriate committee to provide clarification to this matter. We believe that it is likely a misunderstanding that can be resolved through communication.

Respectfully,  
ATC Makena Holdings, LLC



Becky Broudy Collins  
Project Manager

Encl. Exhibit A, A-1, A-2  
Exhibit B  
Exhibit C, C-1

Cc: Joseph Pontanilla  
Gladys Coelho Baisa  
Robert Carroll  
Elle Cochran  
Donald G. Couch Jr.

Mr. Danny Mateo, Chair  
and members of the Maui  
County Council  
Re: Response to Mr. Hall  
August 23, 2011  
Page 4 of 4

Cc Cont: G. Riki Hokama  
Michael P. Victorino  
Mike White  
Alan M. Arakawa, Mayor  
William Spence, Planning Director  
Patrick Matsui, Deputy Director, Parks & Recreation



## EXHIBIT A

### TRANSMITTAL LETTER

TO: Patrick Matsui  
Planning Division  
Department of Parks and Recreation

FROM: Don Fujimoto  
Vice President  
Dowling Company Inc.

DATE: June 26, 2009

RE: **UNILATERAL AGREEMENT AND DECLARATION REGARDING  
PUBLIC USE OF MAKENA LANDS**

Dear Mr. Matsui:

Attached please find the Unilateral Agreement and Declaration Regarding Public Use of Makena Lands (hereinafter referred to as the "Unilateral Agreement"). In addition to formalizing our commitment to maintain and allow public access to the Makena parks, we have included provisions in the Unilateral Agreement that satisfy the zoning conditions listed below.

The change in zoning for Makena Resort is covered by Ordinance No. 3613, entitled "A BILL FOR AN ORDINANCE TO AMEND PORTIONS OF LAND ZONING MAP NOS. 5 AND 514 TO ESTABLISH A-2 APARTMENT DISTRICT, B-2 COMMUNITY BUSINESS DISTRICT, B-R RESORT COMMERCIAL DISTRICT, H-M HOTEL DISTRICT, PK-1 NEIGHBORHOOD PARK DISTRICT, PK-4 GOLF COURSE PARK DISTRICT, R-1 AND R-3 RESIDENTIAL DISTRICT ZONING (CONDITIONAL ZONING) FOR LANDS SITUATED AT MAKENA, MAUI, HAWAII", requires compliance with 44 conditions of zoning. Three of the 44 conditions, Conditions No. 32, No. 35 and No. 36 require expansion and maintenance of specific parks within Makena for Keaka LLC, Makena Golf, LLC, Makena Hotel, LLC, Makena Resort Services LLC, and Makena MF-2&3, LLC, its successors and permitted assigns, referred to hereinafter as "Makena Resort". The conditions read as follows:

**CONDITION NO. 32:** The developer shall develop an expansion of the beach park at the south end of Maluaka Beach, such that the beach park shall comprise at least 1.5 acres of land area for public use and beach access. The developer shall submit the necessary applications required for the expansion within six months of the approval of this Change in Zoning. The land area of the expansion of the existing park shall be applied as credit toward satisfying a portion of any applicable park dedication requirements.



BUILDING IN BALANCE

## EXHIBIT A

Patrick Matsui  
June 26, 2009  
Page 2

**CONDITION NO. 35:** The developer shall renovate and beautify Makena Landing (TMK: 2-1-007:094), see attached map, in coordination with the Department of Parks and Recreation and the State Department of Land and Natural Resources. Costs associated with this condition shall not satisfy park dedication requirements.

**CONDITION NO. 36:** The developer shall maintain Makena Landing (TMK: 2-1-007:094), North Maluaka (TMK: 2-1-007:068), and South Maluaka (TMK: 2-1-005:124), see attached map, and all future parklands within the Makena Resort Area.

I would be happy to meet with you to discuss the attached in more detail. Please call me at 270-0526 to schedule an appointment. If the attached is acceptable, please let me know and we will proceed to execute the document.

Sincerely,



Don Fujimoto

DF:jek

Enclosure

# EXHIBIT A-1

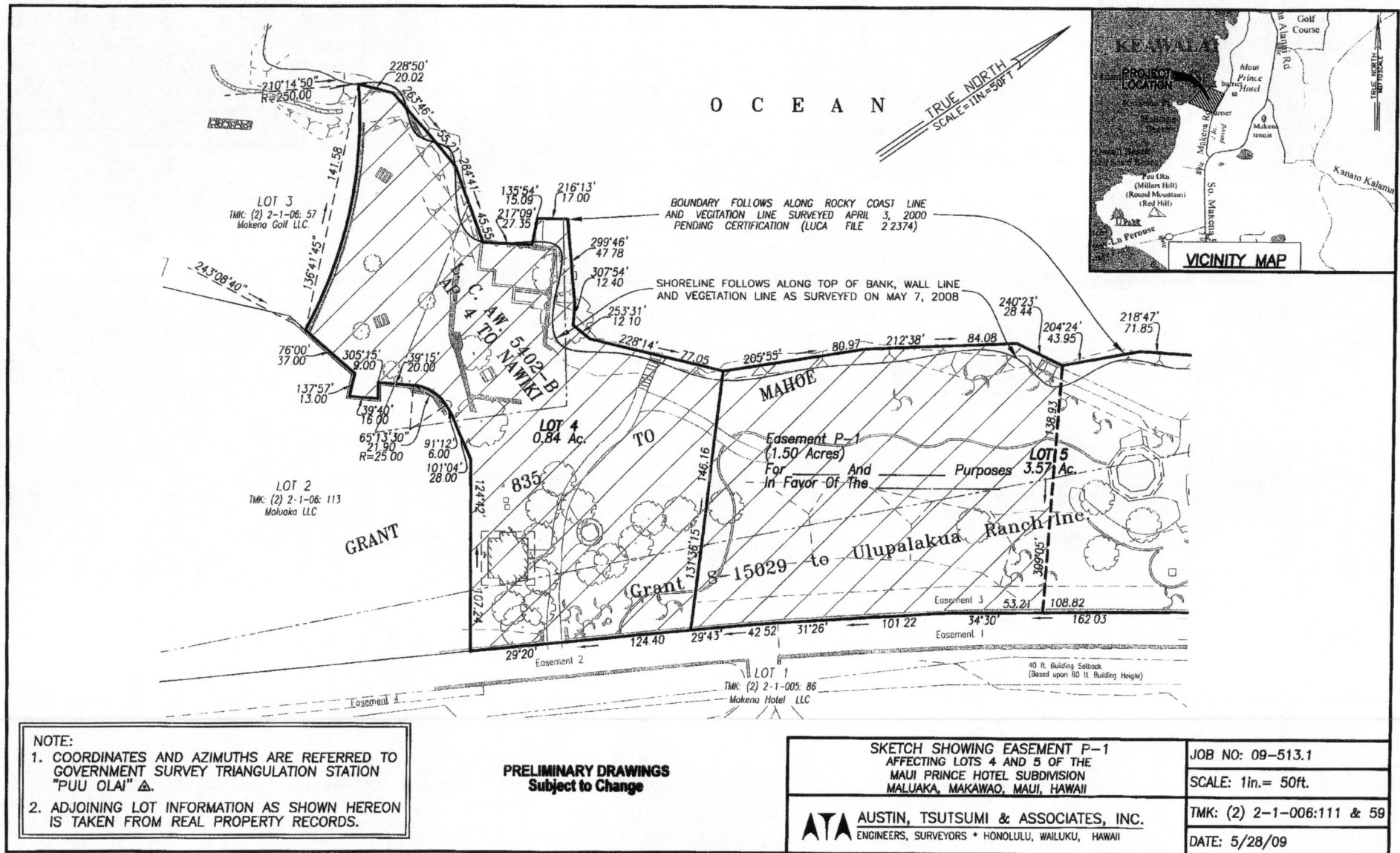




Exhibit B



Gate at low rock wall



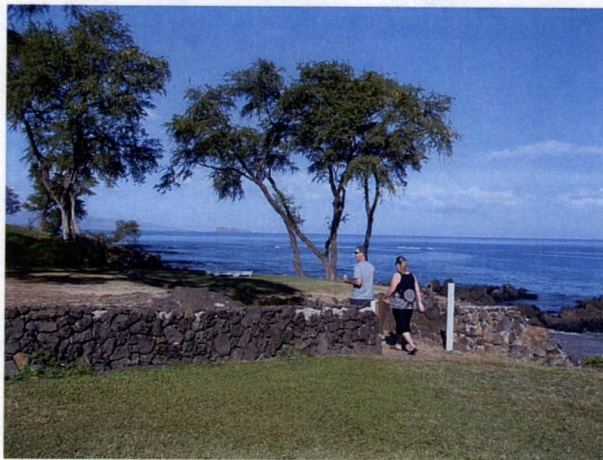
Gate latch – not locked



Exhibit B



Gate Removed 8/18/11



People Accessing Shoreline



Kihei spearfisher that frequents the area



EXHIBIT C

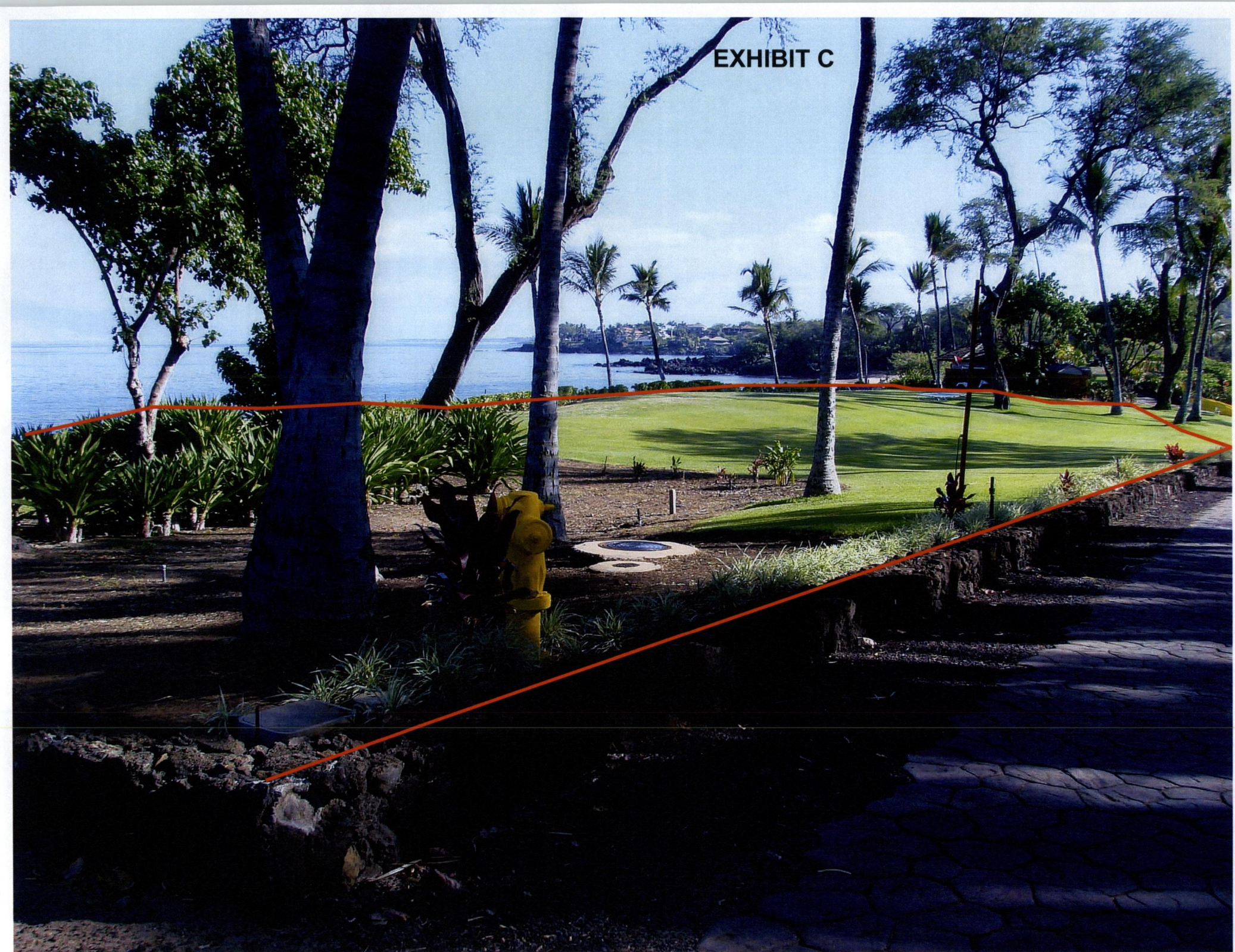




EXHIBIT C-1





