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## M I N U T E S

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Planning and Land Use Committee

12

Council of the County of Maui

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Council Chamber

14

March 18, 2004

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1 RECONVENE: 4:43 p.m.

2 PRESENT: Councilmember Wayne K. Nishiki, Chair  
3 Councilmember G. Riki Hokama, Vice-Chair  
4 Councilmember Robert Carroll, Member  
5 Councilmember Jo Anne Johnson, Member  
6 (lv 3:20 a.m.)  
7 Councilmember Dain P. Kane, Member  
8 Councilmember Danny A. Mateo, Member  
9 (lv 3:20 a.m.)  
10 Councilmember Michael P. Molina, Member  
11 (lv 3:20 a.m.)  
12 Councilmember Joseph Pontanilla, Member  
13 (lv 3:20 a.m.)  
14 Councilmember Charmaine Tavares, Member

15 EXCUSED: None

16 ABSENT: None

17 STAFF: David Raatz, Legislative Attorney  
18 Yvette Bantilan, Committee Secretary  
19 Ken Fukuoka, Director of Council Services

20 ADMIN.: Alice Lee, Director of Housing and Human  
21 Concerns  
22 John Buck, Deputy Director of Parks and  
23 Recreation  
24 Ann Cua, Planner, Department of Planning  
25 Michael Foley, Planning Director  
26 Ellen Kraftsow, Chief of Planning Division,  
27 Department of Water Supply  
28 George Tengan, Director of Water Supply  
29 Brian Moto, Corporation Counsel

30 OTHERS: Roy Figueiroa, Makena Resort Corp.  
31 (applicant's representative)  
32 Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc.  
33 (applicant's consultant)  
34 Aki Sinoto (applicant's archaeologist)  
35 Additional attendees (25)

36 PRESS: Ilima Loomis, The Maui News  
37 Tim Hurley, Honolulu Advertiser  
38 Gary Kubota, Honolulu Star Bulletin  
39 Akaku: Maui Community Television, Inc.



1 below has another paragraph in it that says  
2 essentially that we will treat you like any other  
3 corporation, if there's water available you will get  
4 service, if there's no water available you will not  
5 get it, or some -- something to that effect.

6 COUNCILMEMBER MATEO: So there's no guarantee.

7 MR. MOTO: Not as -- not as I read it.

8 COUNCILMEMBER MATEO: Thank you.

9 MR. MOTO: But, you know --

10 COUNCILMEMBER MATEO: Thank you, Mr. Moto. Thank you,  
11 Mr. Chair.

12 CHAIR NISHIKI: Okay. Any other discussion as to language  
13 on the water condition? If there are no objections,  
14 we'll include that language.

15 VICE-CHAIR HOKAMA: Object.

16 COUNCILMEMBER JOHNSON: No objection.

17 CHAIR NISHIKI: Thank you.

18 VICE-CHAIR HOKAMA: Objection.

19 CHAIR NISHIKI: Oh, I'm sorry. Okay. We'll have that  
20 discussion when we deal on the vote. Is that okay,  
21 Riki?

22 VICE-CHAIR HOKAMA: That's fine, Chairman. Thank you.

23 CHAIR NISHIKI: Okay. Thank you. We'll move -- maybe  
24 this is a good time because we asked Roy to address  
25 what Charmaine had proposed in regards to parks and



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1           whether the developer tonight has any language in to  
2           offer. What -- what perhaps, Roy, you've thought  
3           about in regards to parks.

4                   Also you have that letter from the Parks  
5           Department that was submitted to us from Mr. Correa  
6           here also, yeah. Okay. Yeah.

7                   Is Parks Director here or his representative?

8   COUNCILMEMBER KANE: Deputy right there.

9   CHAIR NISHIKI: Oh, there you are, Mr. Buck. Thank you.

10                   Do you have anything to pass out to us or is  
11           it pretty clear? Roy?

12   MR. FIGUEIROA: Me? No.

13   CHAIR NISHIKI: Nothing?

14   MR. FIGUEIROA: I do not have anything at this time.

15   CHAIR NISHIKI: Okay. Go ahead.

16   MR. FIGUEIROA: Okay. Are we on number -- from 35 on?

17           Well, I'm --

18   CHAIR NISHIKI: Yeah. You know, the last time

19           Charmaine --

20   MR. FIGUEIROA: -- I'm not sure where we're on on the  
21           list.

22   CHAIR NISHIKI: -- had a --

23   COUNCILMEMBER TAVARES: Thirty-five.



24 CHAIR NISHIKI: -- Charmaine had a resolution to a -- a  
25 swap between giving you the 25 acres for hotel, and

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1 then as part of the parks assessment the 10 -- the  
2 10 acres fronting the proposed hotel rezoning would  
3 be park. And so then I guess the Committee asked  
4 you if -- to take into consideration perhaps another  
5 proposal that we may look at that you can -- we can  
6 rely on from where you stand. Go ahead.

7 MR. FIGUEIROA: Well, we did take a look -- I must say  
8 that I -- actually I do have some pictures of the  
9 area that I do have that I could pass out now that I  
10 recall as far as the particular area we're talking  
11 about as far as perhaps expanding the existing park  
12 on the south end of Maluaka Beach.

13 We do not think it's -- we do not think it's  
14 fair that there be a -- for the condition of  
15 approval of the 28 acres for hotel, H-M Hotel-zoned  
16 property, that we trade in our existing 11 acre H-M  
17 Hotel-zoned property. Saying that, we did look at  
18 an area that perhaps could be used to enhance the  
19 public's use of Maluaka Beach and adjacent to the  
20 south of that by lateral access reaching to the  
21 Oneuli Beach or going into that direction.



22           So what I did was try to look at what area  
23           was available in the area that's being rezoned. And  
24           part of the area that's being rezoned is the PK-4,  
25           which is the golf course zoning along the beach.

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1           And at the north end of that particular area there  
2           is a -- a portion of the property that perhaps could  
3           be developed further for park use. We do not have  
4           much area there, but it is a -- a significant  
5           picturesque site that could be used to extend that  
6           particular beach park.

7           If you'd like I could pass out the -- the  
8           picture of that area, plus the area along which the  
9           lateral access could extend. We did have someone  
10          from the State DLNR walking that property today. It  
11          belong to the portion of the DLNR that does trails.  
12          I'm trying to remember the exact name of that  
13          particular part of the DLNR forestry division.

14   VICE-CHAIR HOKAMA: Na Ala Hele.

15   COUNCILMEMBER TAVARES: Na Ala Hele.

16   MR. FIGUEIROA: Na Ala Hele, that's right. Okay. So we  
17          walked that area to see where that trail lateral  
18          access could be. And so there were some good ideas  
19          that they shared with us, and we can see how it



20 would work through a portion of that property along  
21 the golf course. So by the extension of that beach  
22 park further south to take in the point out there  
23 toward the ocean, and then from that point have a  
24 lateral access to the sand area at the south --  
25 toward the south end of the golf course.

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1 When you reach the very southernmost limit of  
2 the area to be rezoned, then there is a problem with  
3 the grade in that area, sharp drop-off from the golf  
4 course hole. So therefore, in that area we'd  
5 recommend as Ms. Nohara did, recommend that that  
6 trail go until the sandy area, stop there, and then  
7 you could travel along the sandy area and continue  
8 that access toward Oneuli Beach. So that was  
9 another component of what we would propose.

10 In the area of -- I -- I still believe that  
11 the idea we had of providing a -- a plan for the  
12 State Park at Makena, recreational plan that would  
13 include some parking, I thought it was a good idea.  
14 And I presented that to DLNR representatives, and  
15 they said they would encourage and support that idea  
16 of creating a -- a plan whereby that plan would  
17 designate where the parking areas could be.



18                   Because right now as -- even as we looked at  
19                   Oneuli Beach, you could see cars that were driving  
20                   almost to the sand on that beach because there's no  
21                   set parking area for them for that particular beach.  
22                   And then we believe that when they -- as the -- each  
23                   project comes on, at that particular stage by having  
24                   that plan as a basis, then it could determine what  
25                   improvements could be assessed each project toward

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1                   the implementing of that particular plan for that  
2                   Oneuli Beach.

3                   And as I said earlier, it was -- if it was  
4                   determined -- and -- and we would be doing this plan  
5                   for DLNR. In other words, it would still be  
6                   something that they would have to adopt and  
7                   implement. And then the County could, as I said,  
8                   judge each project and see how much they would  
9                   contribute judging on the -- the scope of that  
10                   project toward the development of that plan, whether  
11                   it'd be parking or facilities that could be applied  
12                   to that lot.

13                   And if there weren't enough space there, then  
14                   -- then that plan should look at other areas that  
15                   could be developed beyond that park or across the



16 street, as Mr. Nishiki mentioned.

17 There is an area further down that is within  
18 the community plan that is not part of this  
19 application yet, and I think that also could be  
20 satisfied as far as creating an opportunity for  
21 beach use. And this is mainly for the fishing area  
22 further to the south before you reach La Perouse. I  
23 believe we have set in the community plan about 2.2  
24 acres in that area.

25 I haven't gotten the response. I -- I guess

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1 I forgot to run that by the Parks Department, so I'm  
2 not sure how they would react to that particular  
3 lot, but that could also be available.

4 There is an area that you're looking at as  
5 far as park use that we designate I believe it's one  
6 -- a little over one acre at the south end of our  
7 change in zoning. If someone could point that out,  
8 I'd appreciate that. Yeah, right there.

9 Now that -- the reason we only ask for that  
10 much is because that's the only part within the  
11 urban boundary. However, that -- even that could be  
12 expanded to what the community plan says would be a  
13 4.4 acre parcel eventually in the community plan.



14 So that's another area that could be used.

15 In response to the Makena Landing, I -- we  
16 still have a difficult time understanding that that  
17 would be a practical suggestion to implement. We've  
18 talked it over with the Parks Department. They have  
19 the same concern we do. As far as increasing the  
20 ability to use that particular park or in that  
21 particular beach is very limited in size.

22 So you may want to ask the Parks Department  
23 again how they feel about that. As I said, it's a  
24 -- a suggestion that we feel will not be to the  
25 benefit really of the general public.

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1 So those are the areas, as I said, that we  
2 could increase, for example, what's on the beach  
3 side. If you'd like I can pass out the pictures  
4 that I do have for that area, including a view of  
5 where the lateral access would be so you could have  
6 some idea of what it is.

7 CHAIR NISHIKI: Questions for Roy? And -- and -- and  
8 maybe we should go area by area or I don't know how  
9 this Committee wants to proceed so we don't jump all  
10 over the place.

11 VICE-CHAIR HOKAMA: May we request to see the photos,



12 Chairman?  
13 CHAIR NISHIKI: Sure.  
14 COUNCILMEMBER KANE: Mr. Chair?  
15 CHAIR NISHIKI: Yeah.  
16 COUNCILMEMBER KANE: Just real quick.  
17 CHAIR NISHIKI: Go ahead, Dain.  
18 COUNCILMEMBER KANE: Does Mr. Figueiroa have a copy of the  
19 March 18th letter that, I think, Director Correa of  
20 Parks has sent to you and this body, Mr. Chair?  
21 CHAIR NISHIKI: I'm not sure. David, is there an extra  
22 copy from Parks?  
23 David, we have any other pictures also of the  
24 -- these areas for Committee?  
25 MR. RAATZ: Yeah, I'll check.

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1 CHAIR NISHIKI: Okay. Maluaka first then, Roy, we have  
2 that. There's a picture there fronting Maluaka.  
3 MR. FIGUEIROA: Okay. If we could start from the --  
4 CHAIR NISHIKI: King's Road.  
5 MR. FIGUEIROA: Okay.  
6 CHAIR NISHIKI: Okay.  
7 MR. FIGUEIROA: That is the area of -- of what we're  
8 showing here. You see where the -- just beyond that  
9 sign that is shown there in the middle of the



10 picture? The beach access begins there coming  
11 toward the south, and that's the public restrooms  
12 that we built there on that picture numbered number  
13 seven.

14 Then the next picture of the park is what we  
15 developed as a park. That to -- is to the makai  
16 side of the public restrooms. So that's the  
17 existing area that we're asking for the change in  
18 zoning. Part of this was hotel on the former zoning  
19 and part of it was, I believe, open space. And so  
20 we're asking for the change in zoning to the PK-1  
21 designation for this particular park.

22 Now you see in that picture number nine, you  
23 see there's a wall right about the middle of the  
24 picture level with the bottom of that tree, see the  
25 -- the crown of that tree? Okay. That wall is the

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1 southernmost boundary of this particular park.

2 So then when you look at the next picture,  
3 that would be the area which is number 11, that  
4 would be the area to the south of that particular  
5 park where you're getting close to the golf course.  
6 And that is where we would say we would extend that  
7 park into this area where you could develop this



8 again. And we would look at developing it in a  
9 similar way to what you see in picture number  
10 nine -- numbered nine where you have grassed area.

11 And then you're looking at picture number  
12 11. If you look to the right edge, see, that's sort  
13 of like a point going out toward the ocean. So we  
14 believe right now that would expand this particular  
15 park to one-and-a-half acres. We'll probably create  
16 not only -- we wouldn't recommend taking down the  
17 wall that was built there, but we'd probably  
18 recommend creating an opening that we would do.

19 And again, this is something that we would be  
20 doing because I don't believe the Parks and  
21 Recreation Department would like to inherit this  
22 undeveloped. And we recommend being able to do it  
23 and then maintain it again as we do the existing  
24 park area.

25 As you can see, it is a -- a beautiful area

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1 that -- that could be used for additional as it  
2 shows here some kind of picnic area. And -- and as  
3 I said, that would increase that particular park to  
4 one-and-a-half acres.

5 Now if you look at the tree in the middle of



6        number 11, that keawe tree right about in the middle  
7        of the picture, the park would extend to about that  
8        area. And so the lateral access then would continue  
9        from that along the shoreline.

10       The next picture is continuing southward.  
11       You can see how people are walking -- you see that  
12       path in picture number 16? There appears to be a  
13       used path between that stake and the keawe tree  
14       toward the bottom right side of the picture.

15       But we believe by creating the park, we could  
16       continue the access, the lateral access, closer to  
17       the shoreline, which would alleviate our concerns  
18       about being too close to the golf course. And right  
19       now that would require some work along the shoreline  
20       so we could get them closer to the beach.

21       Now if you look at the next picture, number  
22       23, as we discussed with Ms. Nohara, this would be  
23       probably the area she believes and -- and we believe  
24       that the lateral access would come right to the  
25       beach itself. And that beach connects to Oneuli

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1       Beach to -- if you look in that picture number 23,  
2       you see the stake with the white -- white stake with  
3       the blue top, would be around that area, take it



4 right to the beach. And then from there you'd be  
5 walking along that beach as a lateral access, and  
6 that would take you right through to Oneuli Beach.

7 If we look at the next or even -- yeah, it  
8 would be the next picture, number 28, this is where  
9 if we did not stop the lateral access at the beach  
10 itself and took it up above into the vegetation, we  
11 get close to the golf course and then there would be  
12 a sharp drop to come back to the beach because of  
13 the -- the elevation difference. And that's why we  
14 concur that it would probably be best to stop it at  
15 the sand beach, the beginning of that north end of  
16 the beach.

17 If you look at number 30, picture number 30,  
18 the shoreline looking back, that shows you the type  
19 of beach that you would be walking along in order to  
20 continue the access toward Oneuli Beach. So in  
21 looking at picture number 30, you're looking  
22 northward, the opposite direction.

23 And number 41 again shows you the -- going  
24 back to the makai side of the park that was already  
25 developed. And that wall is now between the area of

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1 the existing park and what we propose to expand.



2 But it does if you see on number 41, the shoreline  
3 does jut out toward the west. So there's a point  
4 out there that it goes out toward that you would be  
5 able to utilize for the beach public area.

6 As far as Maluaka also as the parking, I  
7 believe there was concern that there was not enough  
8 parking. We do have 30 stalls, and we believe that  
9 probably another 30 could be constructed in that  
10 particular area. And that would alleviate -- well,  
11 not alleviate, it would encourage use of that  
12 particular beach.

13 As I said, combined with -- well, if you want  
14 me to stop at Maluaka, I'll -- I'll stop right  
15 there.

16 CHAIR NISHIKI: Yeah. I think we want to -- we want to  
17 stop there and -- and ask questions. So then you  
18 could put 30 more parking stalls and also address  
19 the lateral to Oneuli that was asked of and also a  
20 path.

21 Questions from Members?

22 COUNCILMEMBER TAVARES: I'd like to hear comments,

23 Mr. Chair, from the Parks Department.

24 CHAIR NISHIKI: Parks?

25 MR. BUCK: We, from the Parks Department, cannot support

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1 the -- what is some of the conditions. However, the  
2 way the conditions were brought or -- or part of  
3 some of the conditions we had a comment on because  
4 of the fact that it's inconsistent on what we're  
5 doing now at other parks and recreation  
6 facilities --

7 COUNCILMEMBER TAVARES: Wait, wait, John.

8 MR. BUCK: -- and parking lots.

9 COUNCILMEMBER TAVARES: John, excuse me. Just on this  
10 proposal.

11 MR. BUCK: Oh, on this proposal?

12 COUNCILMEMBER TAVARES: Yes, uh-huh.

13 MR. BUCK: I think it's a -- a good plan, workable. It  
14 gives us access. I think the only concern I have is  
15 as far as what type of develop it's going to be. I  
16 mean, is it going to be a natural path or a -- a --  
17 a six-foot wide developed concrete paved or we're  
18 going to just kind of try to leave it in a natural  
19 state. Because when you start cutting -- I think  
20 one of our concerns may have been concerning the  
21 developer, if you start cutting into banks and  
22 things, there might be the concern of erosion.

23 CHAIR NISHIKI: Go ahead, Roy.

24 MR. FIGUEIROA: Well, we looked at the area with  
25 Ms. Nohara and we feel that there -- there could be



1 areas that could be as wide as six feet. However,  
2 if it were a hard path we don't know if that would  
3 be the best. We'd like to work with them, with the  
4 DLNR, as to what type of path it -- it would be.  
5 The other concern I forgot to mention is that of the  
6 keeping it open 24 -- 24 hours a day, seven days a  
7 week because there was concern about the liability  
8 in that area.

9 I believe she referred me to something in  
10 Lanai about a memorandum of understanding as to how  
11 the -- the fishermen's trail, for example, she was  
12 going to get me a copy of that memorandum of  
13 understanding. But I understand in that one it's  
14 not a hard trail, but it does provide access. And  
15 she was more accustomed to something like a  
16 four-foot wide, around four-foot wide trail.

17 But as far as the areas I pointed out that it  
18 would be difficult is where I have that sharp bank.  
19 In other areas, it looks like as long as we are able  
20 to -- and -- and this is something the Planning  
21 Department can clarify because it -- it would be  
22 within the shoreline setback area. And also, I  
23 don't know if it would require an SMA permit to do  
24 it.



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1 is to how long we had to do it because I think your  
2 condition said about six months and I don't believe  
3 that's possible. Well, let's put it this way. It's  
4 probably possible, but I shouldn't even use the word  
5 probably possible. I'll let them comment. It's --  
6 it's very difficult. I can't see it happening in  
7 six months.

8 I'm not saying I'm not willing to work hard  
9 to get it done, but I don't think I can control  
10 where it could happen in six months doing the --  
11 because of the process involved. So maybe they can  
12 comment.

13 MR. FOLEY: Mr. Chairman, Mr. Figueiroa is correct, it  
14 would require a shoreline setback variance and an  
15 SMA permit. However, we would be very supportive of  
16 increasing shoreline access. But in addition to  
17 processing those two permits, it also needs to be at  
18 least preliminarily designed. So six months isn't  
19 very realistic. They'd probably need, oh, a little  
20 longer than that. Maybe nine months would be  
21 accurate for design and approval.

22 CHAIR NISHIKI: Charmaine --



23 VICE-CHAIR HOKAMA: Chair --  
24 CHAIR NISHIKI: -- any other questions from --  
25 VICE-CHAIR HOKAMA: Chairman? Oh, I'm sorry. I am sorry.

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1 COUNCILMEMBER TAVARES: No. Go ahead.  
2 CHAIR NISHIKI: Riki, go ahead.  
3 VICE-CHAIR HOKAMA: Chairman, since Mr. Figueiroa did  
4 mention a memorandum of agreement as we -- we call  
5 it and use it on Lanai, I would just ask the Members  
6 if they would look at page 11, which is under the  
7 subheading just Park, if you look at the bottom of  
8 the middle of the photograph, that -- that sandy  
9 area, that would be pretty close to what we have on  
10 Lanai regarding the -- the Hulopoe area which fronts  
11 the Manele Hotel.

12 It is an existing fishermen's trail, so it is  
13 very rugged. It's maintained, but you need to be  
14 careful of what you're walking on. It's -- it's  
15 very much in its natural state. So again, you know,  
16 I -- I -- I've heard the comments from Mr. Buck,  
17 there is limited access because of the natural  
18 condition and that if you're not careful you  
19 definitely can get hurt.

20 But it works for us on Lanai. It's part of a



21 -- a resort development amenities. It is something  
22 we -- we still use as residents for -- to get to  
23 certain fishing spots, which I won't share with  
24 you. But we use it still yet as -- as locals also.  
25 So I think if the Parks Department, DLNR

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1 works with the Planning Department, I can see this  
2 being a very work workable option for this site,  
3 Mr. Chairman. Thank you.

4 CHAIR NISHIKI: Any other questions, comments?

5 COUNCILMEMBER TAVARES: Comment.

6 CHAIR NISHIKI: Charmaine, go ahead.

7 COUNCILMEMBER TAVARES: Yeah, Mr. Chair, I -- I like this  
8 particular plan and effort so far that's been taken  
9 to get input from DLNR. I think as we heard through  
10 the testimonies, there were a number of testimonies  
11 regarding access to shorelines, and I am in total  
12 support of what Mr. Foley is saying about increasing  
13 shoreline access.

14 But I think not only increasing shoreline  
15 access because as you look at these pictures with  
16 the nondeveloped area, the wall, it's already  
17 screaming keep out, kapu. And I think we heard that  
18 people want to have what they had before, ability to



19 access without feeling like they were trespassing.  
20 And I think with working together with the  
21 Parks Department, DLNR, and Planning Department,  
22 that a -- it can be developed to a point, not  
23 overdeveloped, but developed to a point where it is  
24 at least welcoming and -- and encouraging and not  
25 giving people that feeling that they are in a place

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1 they shouldn't be.

2 So for -- for those reasons, I -- I like the  
3 proposal and thank the developer for putting in the  
4 effort in a rather short period of time to come up  
5 with this.

6 CHAIR NISHIKI: Any other comments, Charmaine, that's it?

7 COUNCILMEMBER TAVARES: That's it.

8 CHAIR NISHIKI: Jo Anne?

9 COUNCILMEMBER JOHNSON: As Chair of the Parks and  
10 Agriculture Committee, I think that any opportunity  
11 we can take to try to address the concerns that have  
12 been expressed is really important.

13 The -- there was one letter that we received  
14 and -- you know, about whether the path should or  
15 should not be developed. And the letter that we  
16 received was -- was from the Department of Health.



17 And it doesn't say specifically Clean Water Branch,  
18 but, you know, I know that in this statement that  
19 was made, June Harrigan Lum, who's the Environmental  
20 Planning Office, wrote that they regretted they  
21 didn't have enough notice or information about the  
22 matter to be able to be -- you know, to respond.

23 And she stated that again, the same things  
24 that Planning has stated that -- in this case she's  
25 saying an EIS, EA, or Land Use application documents

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1 were ordinarily provided.

2 So my concern and my only concern about her  
3 letter is that whatever's done in terms of whether  
4 it's a developed path, undeveloped path, I -- I just  
5 hope that we can provide that data so that we can  
6 get a response back from the Department of Health.

7 And also I didn't, and correct me if I'm  
8 wrong, I didn't see and I may have just missed it, I  
9 was looking for the OHA comments too because with  
10 the PASH rights and all of the access rights that  
11 native Hawaiians have, those two issues would be  
12 really critical.

13 I -- I really defer to Mr. Buck and the  
14 Planning Commission about some of the other issues



15           regarding what is appropriate, the amount of traffic  
16           that can be handled in that area, because they know  
17           the area much better than I do and they know what  
18           the usage is.

19                     But I just -- those would be my concerns,  
20           Mr. Figueiroa, in those two areas, try to get some  
21           kind of a response back both from the Department of  
22           Health and also from Office of Hawaiian Affairs with  
23           regard to the area being kept open for the practice  
24           of native gathering rights.

25   MR. FIGUEIROA:   If I may comment or ask a question.   Are

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1           you referring to being open 24 hours a day, seven  
2           days a week, is that the --  
3   COUNCILMEMBER JOHNSON:   Well --  
4   MR. FIGUEIROA:   -- condition?  
5   COUNCILMEMBER JOHNSON:   -- with regard to PASH, basically  
6           when people want to go fishing, I mean, they go at  
7           all hours of the night.   Sometimes there's other  
8           cultural practices that may take place during  
9           certain times of the year for religious ceremonies.  
10          I think that in consultation with Na Kupuna or other  
11          organizations and particularly OHA, I think that  
12          they would have to look at whatever access was



13 open.

14 And I'm not saying necessarily that to all  
15 other people it would be open 24 hours a day because  
16 I don't want drug dealing and other issues, plus  
17 just the visibility in that area, we don't want to  
18 put lights all along that area, I mean, so that it's  
19 -- it's really creating other problems with our  
20 nearshore waters.

21 And I know that Mr. Molina's committee is  
22 dealing with the -- the lighting near the ocean and  
23 some of the shorebird issues. So just to have some  
24 kind of comment I think would be really helpful in  
25 looking at this.

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1 MR. FIGUEIROA: We would welcome the input from the  
2 different groups you mentioned and the agencies.  
3 And that's why perhaps I'm not as optimistic as  
4 Mr. Foley about nine months would be enough. I  
5 believe if you gave me a year, I might say it's  
6 possible. I still might not be comfortable, but  
7 that's why I -- I believe the nine months is  
8 probably very optimistic given the comments you've  
9 just -- you've just made.

10 COUNCILMEMBER JOHNSON: And -- and I would say that as



11 long as you begin the process within that period of  
12 time, I think that's basically what the purpose and  
13 intent of putting that condition in. Because just  
14 from recent rulings we've had, even with our own  
15 Parks Department with regard to our ocean recreation  
16 activities, we're having serious concerns about even  
17 being able to accomplish some of the charges that  
18 we've been given by our own Council Members.

19 So it's not easy and Mr. Buck knows what he's  
20 having to go through. Just ask some of the -- you  
21 know, even our school which we thought might not  
22 have as long a period of time, we're having  
23 difficulty even completing that. So I think if some  
24 language could be put in there that in working  
25 towards this, that at least the process is embarked

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1 on within a reasonable period of time.  
2 MR. FIGUEIROA: Thank you. And I -- I think the Parks  
3 Department as far as being able to -- we'd like  
4 after we do this work that the Parks Department or  
5 the County of Maui does accept dedication of this  
6 area to the County.

7 And as far as the lateral access would also  
8 be -- we would like to dedicate that easement of the



9 lateral access to the County. Maybe you'd like to  
10 get the Parks Department's response on that. It  
11 would be a requirement of the County, and we do have  
12 some concerns on that liability.

13 You know, it's different from just allowing  
14 how people just walk to the beach now, and it's  
15 different from giving them an invitation by  
16 establishing a hard surface toward that beach. I  
17 think the liability, the -- the attorneys would have  
18 to answer that, but it's -- I think they'd make a  
19 distinction between people just climb over rocks or  
20 whatever, rough trail as Mr. Hokama brought out,  
21 it's different from if you invite them to take that  
22 path as to who has the liability on that.

23 But we would like to cooperate in having this  
24 done, and as I said, we would like the County to  
25 accept the dedication of the area once it's done.

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1 COUNCILMEMBER JOHNSON: That basically would be from my  
2 understanding, correct me if I'm wrong, Mr. Moto,  
3 acceptance of any land dedication would be in the  
4 Council's purview, is that correct?

5 MR. MOTO: Mr. Chairman, yes, the Council would have --  
6 pursuant -- pursuant to Maui County Code Provisions,



7 the -- the County Council would have to accept any  
8 conveyance of an interest in real property.

9 COUNCILMEMBER JOHNSON: Okay. Thank you.

10 CHAIR NISHIKI: Riki?

11 VICE-CHAIR HOKAMA: Thank you, Chairman.

12 Mr. Figueiroa, so we can understand an  
13 earlier condition that we -- we've discussed quite a  
14 bit, but I want to bring it up again because since  
15 this subject matter regarding your proposal because  
16 I -- I have listened to Ms. Johnson's concern about  
17 PASH, OHA, and so would this be part of your  
18 Cultural Resource Management Plan as part -- under  
19 the cultural component?

20 When you say access to specified sites, that  
21 you're also including whether it'd be lateral or  
22 beach shoreline access, that that would be part --  
23 would this be also a part of your Cultural Resource  
24 Management Plan that organizations like Na Kupuna,  
25 our County Cultural Resource Commission, our Burial

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1 Councils would be part of the comment and review  
2 process?

3 MR. FIGUEIROA: Right now this is part of our property and  
4 our -- our study would include this area also. And