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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

January 25, 2012

Mr. William Spence, Director
Department of Planning
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Spence:

**SUBJECT: MAKENA RESORT – CHANGE IN ZONING
COMPLIANCE WITH CONDITIONS RELATING TO
ACCESS FOR PARKS AND RECREATION (PC-21)**

At its meeting of January 23, 2012, the Planning Committee discussed Condition 32 of Ordinance 3613 (2009) relating to park expansion at the south end of Maluaka Beach.

May I ask that you please provide the Committee with a map that clearly identifies the following:

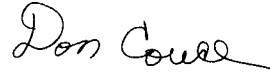
1. The area comprising Maluaka Beach, and all associated tax map keys ("TMK").
2. The exact portion of TMK: (2) 2-1-06:057 that is zoned PK-1 Neighborhood Park District.
3. The exact portion of TMK: (2) 2-1-06:057 that is zoned PK-4 Golf Course Park District.
4. The area discussed by the Planning and Land Use Committee at its meetings of March 18, 2004, April 12, 2004, and April 14, 2004, to be designated for the park expansion. (See attached excerpts of minutes, and accompanying photos submitted by Roy Figueiroa).
5. The area proposed by ATC Makena Holdings, LLC for the park expansion.

May I please request your response no later than **Wednesday, February 1, 2012**. To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Mr. William Spence
January 25, 2012
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Should you have any questions, please contact me or the Committee staff (Kimberley Willenbrink at ext. 7761, or Clarita Balala at ext. 7668).

Sincerely,

A handwritten signature in cursive script that reads "Don Couch".

DONALD G. COUCH, JR., Chair
Planning Committee

pc:ltr:021apl01:kcw

Attachments

cc: Mayor Alan M. Arakawa
Director of Parks and Recreation

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M I N U T E S

Planning and Land Use Committee

Council of the County of Maui

Council Chamber

March 18, 2004

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1 RECONVENE: 4:43 p.m.

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

9 EXCUSED: None

10 ABSENT: None

11 STAFF: David Raatz, Legislative Attorney
Yvette Bantilan, Committee Secretary
12 Ken Fukuoka, Director of Council Services

13 ADMIN.: Alice Lee, Director of Housing and Human
Concerns
14 John Buck, Deputy Director of Parks and
Recreation
15 Ann Cua, Planner, Department of Planning
Michael Foley, Planning Director
16 Ellen Kraftsow, Chief of Planning Division,
Department of Water Supply
17 George Tengan, Director of Water Supply
Brian Moto, Corporation Counsel

18 OTHERS: Roy Figueiroa, Makena Resort Corp.
19 (applicant's representative)
Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc.
20 (applicant's consultant)
Aki Sinoto (applicant's archaeologist)
21 Additional attendees (25)

22 PRESS: Ilima Loomis, The Maui News
Tim Hurley, Honolulu Advertiser
23 Gary Kubota, Honolulu Star Bulletin
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

M I N U T E S

11 PLANNING AND LAND USE COMMITTEE
12 Council of the County of Maui
13 Council Chamber
14 April 12, 2004

CHAIR NISHIKI: Discussion? Jo Anne, go ahead.

10 COUNCILMEMBER JOHNSON: Once again, we went through
this
11 before; and part of the reason why we're looking
at
12 some of the elements that are contained within
the
13 developer's wording is that the developer has
said
14 that they shall develop.
15 In this one, if they're going to only
develop
16 a beach access plan -- but there's no mention of
17 what they're going to implement. There's no
mention
18 of the area where it's going to be. So, I know
it's
19 getting late again; but this is one of those
areas
20 that we went back and forth about this. And I
21 actually think that if we amend the first
paragraph
22 of the developer's proposed conditions, I think
that
23 we might be able to work with it.
24 And my -- my wording would take out in
the
25 developer's originally -- I guess -- I know
we're

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1 not on that subject now; but because we're
2 discussing this, I think that we should
designate 3 that they're going to help develop the expansion
of 4 the beach park at the south end of Maluaka
Beach.
5 I think it should state clearly what the
6 amount of the acreage is and just state that
it's 7 for public use and for beach access. I think
that 8 we did agree or the developer agreed that on the
9 time thing, that they would require the
expansion 10 within six months of the approval of the change
in 11 zoning and that if we just simply say that the
land 12 area of the 1.5 acres would be applied as credit
13 toward satisfying a portion of the applicable
park 14 dedication requirements, to me, I think that
would 15 be better than going back to what we've already
16 discussed which really is just a plan. I think

way. 17 we're actually going backwards if we go that
discussion. 18 So, that's my thought. That's my
Earl 19 CHAIR NISHIKI: You know what? I'm going to pull the
recess 20 Stoner conditions. So, I'm going to have a
21 until 11:10. Thank you. (Gavel.) Meeting in
22 recess.
23 RECESS: 11:04 p.m.
24 RECONVENE: 11:22 p.m.
Committee 25 CHAIR NISHIKI: Meeting please reconvene. The

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-- 1 will be in recess until 4:30 Wednesday. That is
2 MR. RAATZ: In the Council chambers?
3 CHAIR NISHIKI: -- March --
4 COUNCILMEMBER KANE: April 14th.
5 CHAIR NISHIKI: -- April 14th, April 14th, Council
6 Chambers.
7 MS. BANTILAN: What time?
8 CHAIR NISHIKI: 4:30, yeah, p.m. Okay. Meeting in
9 recess. (Gavel.)
10

11 RECESS: 11:23 p.m.

M I N U T E S

11 PLANNING AND LAND USE COMMITTEE

12 Council of the County of Maui

13 Council Chamber

14 April 14, 2004

15

COUNCILMEMBER KANE: Thank you, Mr. Chair. Because

17 Mr. Hokama is not here as the maker of the
motion

18 that's currently on the floor, can I move to
amend

19 the main motion by substituting the main motion
with

20 the contents of your April -- the attachment to
your

21 April 14th memo from you to the members of the
Land

22 Use Committee and that the memo would be
reflected

23 as the attachment itself, Mr. Chair? That's the
24 amendment.

25 COUNCILMEMBER TAVARES: Second.

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1 CHAIR NISHIKI: Moved and second that we amend the

2 Condition 38 to include the language on the
3 April 14th memo to this Committee.
4 COUNCILMEMBER KANE: Mr. Chair.
5 CHAIR NISHIKI: Mr. Kane.
6 COUNCILMEMBER KANE: Mr. Chair, on your behalf, if I
may
7 read your April 14th memo?
8 CHAIR NISHIKI: Go ahead.
9 COUNCILMEMBER KANE: Thank you. On your behalf,
Chair,
10 your -- in your memo you state that "At the
11 Committee's reconvened meeting of April 12, the
12 applicant submitted a document entitled Proposed
13 Park Conditions" and that you "would be pleased
to
14 accept a motion to amend the applicant's
proposal as
15 reflected in the attached document, 'PROPOSED
PARKS
16 CONDITION-REVISED.' proposed deletions from the
17 applicant's proposed" -- "proposal are
bracketed;
18 proposed additions are underscored."
19 The "two major substantive differences
20 between the applicant's proposal and the
attachment
21 document, No. 1, the developer's costs would not
be
22 counted toward park dedication requirements"
and,
23 "No. 2, the developer would be required to
provide
24 perpetual traversable lateral shoreline access,
just

his

25 as applicant Earl Stoner was required to do for

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you

revised

shall

south

shall

shall

the

the

applied as

1 Makena property in 2002, as referenced by the
2 Corporation Counsel during the Committee's
3 reconvened meeting of April 12th, 2004. Thank
4 for your consideration."

5 And, Mr. Chair, would you like the
6 one read into the record?

7 CHAIR NISHIKI: Go ahead. Continue.

8 COUNCILMEMBER KANE: Okay. And, Mr. Chair, the --

9 verbatim the amendment would read: "Developer

10 develop an expansion of the beach park at the

11 end of Maluaka Beach, such that the beach park

12 comprise of at least 1.5 acres of land area for

13 public use and beach access. The developer

14 submit the necessary applications required for

15 expansion within six months of the approval of

16 change in zoning. The land area shall be

17 credit toward satisfying a portion of applicable
18 park dedication requirements. To the extent
19 practicable, the developer" -- and I'm sorry,
20 Mr. Chair. There's a period after
"requirements."

21 CHAIR NISHIKI: Go ahead.

22 COUNCILMEMBER KANE: Okay. And I didn't see that
after
23 the bracket. So, it reads, "the park dedication
24 requirements." It continues, "To the extent
25 practicable, the developer shall provide, in

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in 1 perpetuity, traversable lateral shoreline access
2 the area between the shoreward boundary and the
3 mauka boundary of the Makena Resort Area."
4 And then it goes on to say, "Within one
year
5 of the approval of the change in zoning,
developer
6 shall initiate and fund a plan for the
development
7 of the State Park at Makena for the State
Department
8 of Land and Natural Resources or the County of
Maui,
9 Department of Parks and Recreation. The plan
shall

and 10 incorporate recreational, landscaping, parking
development 11 facility concepts as a guide for future
12 of the park."
13 Under discussion as well, Mr. Chair?
14 CHAIR NISHIKI: Mr. Kane.
understanding 15 COUNCILMEMBER KANE: Mr. Chair, is it your
16 that that second -- or that last paragraph
actually 17 is what the intent of No. 37 in the April 6th
18 document is trying to portray?
19 And in No. 37, that's the one where you
put 20 forth to the body the developer should produce a
21 beach master plan. Because it seems like that
last 22 paragraph is really what the intent of -- of the
23 body was is to actually create a plan for the
24 development of the State Park at Makena.
25 And that's just a question, Chair.

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1 CHAIR NISHIKI: Right. The answer is yes.
2 COUNCILMEMBER KANE: Thank you.
3 CHAIR NISHIKI: Thank you.

4 COUNCILMEMBER KANE: Thank you for the discussion.

5 CHAIR NISHIKI: Any other discussion? Charmaine, go
6 ahead.

7 COUNCILMEMBER TAVARES: Yes, Mr. Chairman, I heard
some
8 talk the -- when did we meet -- the other night
that
9 the park acreage -- that the 1.5 represented the
10 portion that's already developed and an
undeveloped
11 portion. So, can we get some clarification
about
12 what the acreage is? And I think we asked if
there
13 was a map available that showed this park but I
14 had -- I guess I forget now where I heard it,
but I
15 had heard that the 1.5 included the existing
park
16 area.

17 CHAIR NISHIKI: Yeah, I think I would rather not make
that
18 statement. I think when -- the last time the
19 developer was here -- I don't have the numbers
that
20 I wrote of what the existing park was, plus
maybe
21 Roy could clarify what is now existing and the
22 addition, if there are no objections.

23 COUNCIL MEMBERS VOICED NO OBJECTIONS.

24 MR. FIGUEIROA: Roy Figueiroa from Makena Resort. It
was
25 the intent -- I believe the existing park is
about a

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1 .8 acres --

2 CHAIR NISHIKI: Okay.

3 MR. FIGUEIROA: -- plus or minus. And so, the intent

4 was -- and we -- to make it at least 1.5 in
total.

5 COUNCILMEMBER TAVARES: Total.

6 MR. FIGUEIROA: So, perhaps that could be something
you

7 could consider the language of, at least 1.5
acres

8 of land area in total. Maybe that might clarify
it.

9 CHAIR NISHIKI: Thank you, Roy. Any questions?

10 COUNCILMEMBER TAVARES: No.

11 CHAIR NISHIKI: Any other discussion?

12 COUNCILMEMBER TAVARES: Well, Mr. Chair.

13 CHAIR NISHIKI: Charmaine?

14 COUNCILMEMBER TAVARES: If what he -- I understand,
you

15 know, the .8 is already -- or approximately .8
acres

16 is already developed and what they're proposing
to

17 develop would be then, I guess, .7 --

18 CHAIR NISHIKI: Right.

is
20
those
to
19 COUNCILMEMBER TAVARES: -- if my addition or division
20 correct.
21 And that is -- was represented to us in
22 series of pictures that Mr. Figueiroa presented
23 the body. And if we want to say that it shall
24 comprise of at least the 1.5 acres of land area,
25 that's fine; but I believe that only .7 or

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No map found

condition
put
the
1 approximately .7 acres should be allowed to be
2 credited toward their park assessment, not 1.5.
3 COUNCILMEMBER CARROLL: Right.
4 CHAIR NISHIKI: Right. And, also, I think we could
5 request that a map also be attached to the
6 to show the additional acreage. If there are no
7 objections, we could request that also.
8 COUNCILMEMBER TAVARES: So, I'm not sure how we could
9 the wording in there to make it clear that it's
10 .7 that will qualify for credit towards the park
11 assessment.
12 COUNCILMEMBER JOHNSON: Mr. Chair.

13 CHAIR NISHIKI: Jo Anne.
14 COUNCILMEMBER JOHNSON: My suggestion would be to
include
15 at least .7 acres, or whatever it is, of the
land
16 area and then add it in there so that what
you're
17 doing is you're specifying what's going to count
18 towards the portion of their satisfaction. So,
that
19 would be where I would add in whatever they're
going
20 to be credited with for their park dedication.
21 CHAIR NISHIKI: Yeah, go ahead.
22 MR. FIGUEIROA: Could I make a suggestion on this,
23 Mr. Chair? On that, since, I said, it's plus or
24 minus .8 acres; and instead of waiting to find
the
25 exact amount of what that expansion is, could we

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development 1 say -- you see where you deleted "and
2 costs of the expansion"? Could you just delete
"and
3 development costs" so that the sentence would
read,
4 "The land area of the expansion shall be applied
as

I -- 5 credit"? Would that work for you? That's what
6 that's how I would read it if I -- if I got it.
7 COUNCILMEMBER TAVARES: Mr. Chair, I was just fooling
8 around with that section of the -- of the
sentence
9 and putting in the land area of the additional -
-
10 and that's (inaudible) -- the additional
expansion
11 to the existing park shall be applied or
expansion
12 of the existing park.
13 CHAIR NISHIKI: Dain, go ahead.
14 COUNCILMEMBER KANE: No objections to that being a
15 friendly amendment, Chair.
16 CHAIR NISHIKI: Okay.
17 COUNCILMEMBER TAVARES: Oh, does Dain -- Dain is so
much
18 faster than I am. So, it would be that the --
the
19 section -- the sentence that starts with "The
land
20 area," "The land area of the additional
expansion of
21 the existing park shall be applied as a credit
22 toward," et cetera.
23 I'm sorry. I have a little hard time
reading
24 that from here. I didn't bring my binoculars
25 tonight. I'm sorry. Is that what it has?

1 COUNCILMEMBER KANE: Dave, is it blurry or is it us?

2 ? : It's blurry.

3 CHAIR NISHIKI: Okay. Let me read --

4 COUNCILMEMBER TAVARES: Oh, additional.

5 CHAIR NISHIKI: -- exactly what the --

6 COUNCILMEMBER TAVARES: I think the word additional is
7 missing from there.

8 ? : Yeah.

9 ? : You don't need that.

10 COUNCILMEMBER KANE: No need, eh?

11 COUNCILMEMBER TAVARES: No need?

12 COUNCILMEMBER KANE: No need.

13 COUNCILMEMBER TAVARES: Oh, okay.

14 COUNCILMEMBER KANE: No need.

15 CHAIR NISHIKI: That's not necessary, David.

16 COUNCILMEMBER TAVARES: Okay. "The land area of the"

17 COUNCILMEMBER KANE: Chair, go read, Chair.

18 COUNCILMEMBER TAVARES: Read it out for us, please.

19 CHAIR NISHIKI: Okay. I'll read the entire condition.

20 COUNCILMEMBER KANE: Thank you.

21 CHAIR NISHIKI: "Developer shall develop an expansion

of

22 the beach park at the south end of Maluaka

Beach,

23 such that the beach park shall compromise of at

24 least" --

25 COUNCILMEMBER JOHNSON: Comprise.

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1 COUNCILMEMBER KANE: Comprise.

land

2 CHAIR NISHIKI: -- "comprise of at least 1.5 acres of

the

3 area and shall be acceptable" -- "accepted by

4 County of Maui."

5 COUNCILMEMBER KANE: No, no, that's bracketed, Chair.

--

6 CHAIR NISHIKI: Oh, excuse me. We're eliminating that

applications

7 "land area for public use and beach access. The

8 developer shall submit the necessary

the

9 required for the expansion within six months of

of

10 approval of the change in zoning. The land area

applied

11 the expansion of the existing park shall be

12 as credit toward satisfying a portion of the

13 applicable park dedication requirements."

to

14 And then -- that's it. Then it goes on

15 say --

16 COUNCILMEMBER KANE: No. So, that's it.

17 CHAIR NISHIKI: -- "To the extent practicable" --
18 COUNCILMEMBER KANE: We went through all that, Chair,
19 already.
20 CHAIR NISHIKI: Okay -- "the developer shall provide,
21 perpetuity, traversable lateral shoreline access
22 the area between the shoreward boundary and the
23 mauka boundary of the Makena Resort Area."
24 Any discussion?
25 COUNCILMEMBER TAVARES: Mr. Chair?

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1 CHAIR NISHIKI: Charmaine.
2 COUNCILMEMBER TAVARES: Yeah, I think that clarifies
3 everyone what shall be creditable toward park
4 assessment. And I just want to read from -- you
5 know, we took out the part -- or we're proposing
6 take out the part about development costs of the
7 expansion would be also creditable; and we have
8 taken that out.

9 And, Mr. Chair, in the Maui County Code
under
10 the park assessment -- park dedication
requirements

11 out of Chapter 18.16 -- 16.320, parks and
12 playgrounds, it's Section D, E -- E-5 states
that,
13 "The subdivider shall improve the site with lot
14 grading, grass planting, automatic irrigation,
15 parking areas, adequate drainage and comfort
16 stations, provided that the Council may waive
any of
17 these requirements if such improvements are
nearby."
18 And so, with park ded -- park land
dedication
19 comes already the expected development of that
to a
20 certain standard. The standard is stated here
in
21 the Code. So, I don't believe that that should
be
22 like a double -- double-dipping, so to speak.
23 So, I think that there is a reason why we
24 should be deleting this -- that portion; and I
hope
25 that the members can all be satisfied and -- you

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worded 1 know, basically satisfied with the way it's
2 now.

the 3 I thank you, Chair, too, for proposing
4 amendment.
5 CHAIR NISHIKI: Thank you. Any other discussion?
6 Jo Anne?
the 7 COUNCILMEMBER JOHNSON: Yes. My question was because
8 main motion actually had some of these
statements, I 9 believe, in it or on -- in -- basically was it
38 10 that was the original main motion? Is that
11 correct --
12 COUNCILMEMBER KANE: Yes.
13 COUNCILMEMBER JOHNSON: -- Mr. Chair?
14 CHAIR NISHIKI: Yes.
main 15 COUNCILMEMBER JOHNSON: Okay. Because we now have a
16 motion that actually contains some of the
language 17 that we currently have in the amendment, how are
we 18 going to address that or is this going to be an
19 amendment which actually would be substituting
the 20 language in 38?
21 COUNCILMEMBER KANE: It -- it replaces. It replaces.
22 That was my motion.
23 CHAIR NISHIKI: Replaces.
that 24 COUNCILMEMBER JOHNSON: Okay. All right. And does
about 39 25 also -- then it would incorporate 37 -- how

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1 and 40? These -- are these to be dealt with
2 separately, Mr. Chair?

3 CHAIR NISHIKI: Yes.

4 COUNCILMEMBER JOHNSON: Okay. Thank you.

5 COUNCILMEMBER KANE: Mr. Chairman?

6 CHAIR NISHIKI: Continue.

7 COUNCILMEMBER KANE: Thank you, Mr. Chairman. If this

8 amendment is successful and the main motion is

response

9 successful, then it would seem from your

delete

10 earlier to my question that we would vote to

been

11 No. 37 on the April 6th because it's already

12 incorporated into this one condition, Mr. Chair?

13 CHAIR NISHIKI: Yes.

you've

14 COUNCILMEMBER KANE: Okay. And then 39 and 40, as

15 responded, is separate?

16 CHAIR NISHIKI: Yes.

17 COUNCILMEMBER KANE: Thank you, Chair.

all

18 CHAIR NISHIKI: Any other discussion? Seeing none,

19 those in favor say aye.

20 COUNCIL MEMBERS: Aye.

21 CHAIR NISHIKI: All those opposed? Motion carried.

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PLU 4/14/04

16

Kane, 1 VOTE: AYES: Councilmembers Carroll, Johnson,
Mateo, Molina, Pontanilla, Tavares,
2 and Chair Nishiki.
NOES: None.
3 ABSTAIN: None.
ABSENT: None.
4 EXC.: Councilmember Hokama.

5 ACTION: APPROVE AMENDMENT TO PROPOSED CONDITION
NO. 38
6

7 COUNCILMEMBER KANE: We're back to the main motion.

8 CHAIR NISHIKI: Let the record show -- oh, excuse me.
9 This was an amendment.

10 COUNCILMEMBER KANE: Yes.

11 CHAIR NISHIKI: -- to the main motion as amended. Any
12 discussion? All those in favor say aye.

13 COUNCIL MEMBERS: Aye.

14 CHAIR NISHIKI: All those opposed? Motion carried.

Let
Hokama 15 the record show both votes eight to zero, Mr.
16 excused.



7 - King's Road

*Submitted by Roy Figueiroa
(Recd. 3/13/04 plm mtp)*



9 - Park



11-Park



16-Shoreline



23 - Shoreline



28 - Shoreline



30 - Shoreline



41 - Shoreline