

**MINUTES**  
**PUBLIC WORKS AND FACILITIES COMMITTEE**

**Council of the County of Maui**

**Council Chamber**

**October 31, 2007**

**CONVENE:** 10:37 a.m.

**PRESENT:** Councilmember Bill Kauakea Medeiros, Co-Chair  
Councilmember Michael P. Victorino, Co-Chair  
Councilmember G. Riki Hokama, Member  
Councilmember Danny A. Mateo, Member  
Councilmember Joseph Pontanilla, Member

**STAFF:** Scott Jensen, Legislative Analyst  
Pauline Martins, Committee Secretary

**ADMIN.:** Jeffrey Ueoka, Deputy Corporation Counsel, Department of the  
Corporation Counsel (Item No. 31)  
Tamara Horcajo, Director, Department of Parks and Recreation  
(Item No. 31)  
Patrick Matsui, Planning and Development Chief, Department of Parks  
and Recreation (Item No. 31)  
David Galazin, Deputy Corporation Counsel, Department of the  
Corporation Counsel (Item No. 54)  
Milton Arakawa, Director, Department of Public Works (Item No. 54)

**OTHERS:** Mich Hirano, Project Manager, Munekiyo & Hiraga, Inc.

**PRESS:** *Akaku Maui Community Television, Inc.*

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CO-CHAIR VICTORINO: . . . *(gavel)* . . . Good morning.

CO-CHAIR MEDEIROS: Good morning.

CO-CHAIR VICTORINO: This meeting of the Public Works and Facilities meeting will be--Committee, I should say--will be called to order. Again, as a reminder, since no action has been taken on Special Council meeting that was taken at the Special Council meeting on February 26, the issue of the informal OIP ruling remains unresolved. So with that in mind, we will use the decorum that only Members that are assigned to this Committee are in attendance.

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Introductions. Today, I'd like to recognize the Members that are in attendance. First of all, I'd like to introduce our Council Chair Riki Hokama, Budget Chair Joe Pontanilla, Vice-Chair Danny Mateo, and Co-Chair Bill Medeiros.

CO-CHAIR MEDEIROS: Morning.

CO-CHAIR VICTORINO: And myself, Co-Chair Mike Victorino. Corporate [sic] Counsel representatives today, David--David, I always get a tough time with your last name.

CO-CHAIR MEDEIROS: Galazin.

MR. GALAZIN: Galazin.

CO-CHAIR VICTORINO: Galazin--I'm gonna remember that from now--who will be here for PWF Item 54, and Jeff Ueoka for PWF Item 31. Administration representatives. Later on today, Milton Arakawa from the Department of Public Works will be here for PWF-54, and Tamara Horcajo from the Parks and Recreation on PWF Item 31. Council Staff in attendance: Pauline Martins, our Secretary; Scott Jensen, our Legislative Analyst.

Members, we have two items today on the agenda. I will be presiding over the first item, which is PWF-31, which is the waiving of certain park dedication requirements for Kihei Kauhale Subdivision in Kihei.

Co-Chair Medeiros will be presiding over the remaining item, PWF-54, which is the acceptance of dedication of a road widening lot for the Yates Subdivision in Wailuku.

**PWF-31 WAIVING CERTAIN PARK DEDICATION REQUIREMENTS FOR THE KIHEI KAUAHALE SUBDIVISION (KIHEI) (C.C. No. 07-119)**

CO-CHAIR VICTORINO: At this time, I will be accepting public testimony for either item. If you're unable to stay for the second item and wanted to give public testimony at this time, I will accept public testimony. Pauline, do we have any testifiers signed up?

MS. MARTINS: No.

CO-CHAIR VICTORINO: None? Looking in the gallery, I see that beyond the Mr. Hirano, there's nobody else. So with the acceptance of the Committee, I will close public testimony on PWF-31 if there's no objections.

COUNCIL MEMBERS VOICED NO OBJECTIONS.

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CO-CHAIR VICTORINO: Thank you. Moving right along. On PWF-31, the Committee is in receipt of County Communication No. 07-119, from the Director of Parks and Recreation, transmitting a proposed resolution entitled "APPROVING THE WAIVER OF CERTAIN PARK REQUIREMENTS FOR A PRIVATELY OWNED AND MAINTAINED PARK PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE, FOR THE KIHEI KAUAHALE SUBDIVISION, KIHEI, MAUI, HAWAII". The purpose of this resolution is to approve waiver of requirements to provide a comfort station and parking area in the privately owned and maintained park located adjacent to Waipuilani Road in Kihei Kauhale Subdivision, Kihei, Hawaii, consisting of approximately 10,501 square feet, with the tax map key number of (2) 3-9-46:014.

At this time, the Committee received a presentation from the developer on July 5, 2007 and deferred this matter pertaining to further action. A site inspection was held this morning at 9 a.m. at the park site in Kihei so Committee Members could observe the park prior to further Committee discussion. I would now like to ask the Director of Parks and Recreation to provide an overview on this matter. Ms. Horcajo?

MS. HORCAJO: Good afternoon and Happy Halloween.

CO-CHAIR VICTORINO: It's still good morning, but that's okay. Don't push the day.

COUNCIL MEMBERS: . . . (*chuckled*) . . .

MS. HORCAJO: It feels like the afternoon. Good morning; Happy Halloween. Thank you very much for the site visit this morning with the Council members. It was very informative for us, and the developer's representative was there as well to give us some background information. This approximate half-acre location was accepted by letter from the Department of Parks and Recreation in 2002 to be privately owned and maintained. The attached plan at that time did indicate that it was a linear park area that did not have drainage involved with the plan as well as there was no outside fencing area. As we see today from the developed linear park area, it did not follow the plan that was submitted to the Parks Department. The in-lieu fee for this project is approx..., is \$236,000 if in fact the provision were not to accept the park. I believe that the information that we are here today is for the--since the park was previously accepted, I'm not quite sure how this works because the park wasn't developed as submitted--but today, the Council's decision is to act on the waiver of the restroom and parking location for this particular park piece. In addition to . . . uh . . . to that information, at a previous meeting held by this Committee, a proposal was made by Councilmember Hokama to look at some compromise. So I believe that that would also be on the table for your folks consideration as well; and if you have any other questions, I will be here to try and answer them as best as I can.

CO-CHAIR VICTORINO: Thank you. We also have present the developer's representative, Mich Hirano. So if anyone has any specific questions, he's available for questions also. At this time, I'd open the floor for discussion . . . by Members.

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COUNCILMEMBER PONTANILLA: I get one.

CO-CHAIR VICTORINO: Councilmember Pontanilla?

COUNCILMEMBER PONTANILLA: Thank you. You know, after looking at the park, you know, looks nice . . . *(chuckled)* . . . you know. But anyway, coming back from Kihei, my office received a call from a person that lives across the subject property or subject park; and they indicated, or she indicated that she doesn't want any benches. She doesn't want a comfort station because it will only attract undesirables. So just to let you know, Chair, I did receive a call when I came back. Thank you.

CO-CHAIR VICTORINO: And I think the Chair received the same call from the same person, and I think she pretty much tried to reach everybody she knew to reach. So I thank that person for that. And I think some suggestions was made about maybe having the community and that, that, that subdivision meet on this park situation; but let's keep that on the side for right now. I'll open discussion specifically to this park and what we saw and what we were led to believe was the real intent. Council Vice-Chair Mateo?

COUNCILMEMBER MATEO: Chairman, thank you very much. And perhaps, if the Chair will allow, the developer's representative to come down, we could . . . uh . . . I could ask him follow-up questions.

CO-CHAIR VICTORINO: Sure. Any objections to that, Members?

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CO-CHAIR VICTORINO: Yes, Mr. Hirano, would you? Sorry to make you. . . . *(chuckled)* . . .

MR. HIRANO: Good morning, Chair, Co-Chair Victorino and Council members. My name is Mich Hirano--

COUNCILMEMBER MATEO: Mr. Hirano?

MR. HIRANO: --with Munekiyo & Hiraga.

CO-CHAIR VICTORINO: Go ahead, Mr. Mateo.

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COUNCILMEMBER MATEO: Mr. Hirano, thank you. Thank you very much. I guess after this morning's, this morning's visit, I think I was a little more . . . um . . . I was a little more surprised. The pictures that was provided to us by the developer made the park look wider than it actually, actually is. It is really a narrow, a very narrow drainage basin because . . . uh . . . in looking at it and its configuration and its intended actual use is contrary to park use. If . . . if--well apparently, it was not the original design as it was submitted years, awhile ago. What else can be done with this piece? Could it be filled?

MR. HIRANO: I'm not sure whether it could filled. I have to discuss that with the engineer. I think that the contours are such that it has to be lower, and that's why it is as it is, in terms of its elevation with respect to the street level and the grade within the subdivision.

COUNCILMEMBER MATEO: So that is actually an actual slope, the way it is configured?

MR. HIRANO: Yes.

COUNCILMEMBER MATEO: Okay. So there was no way of at least filling or leveling off a part of that to make it more useable?

MR. HIRANO: As I understand from the conversation at the site this morning, Councilmember Mateo, John Patterson--the owners' representative as well--had indicated that when the . . . that area was actually graded, it was much lower and that they did fill it substantially to raise the elevation of the bottom of the basin. He also mentioned that at the . . . underneath the basin, underneath the ground, there are large culverts that run right along the length of the park area, park basin area, and that he believed that culvert was approximately 90-inches in diameter, so it's fairly large.

COUNCILMEMBER MATEO: Okay. Yeah, okay.

MR. HIRANO: So there was substantial fill put in to get to that grade. Yes.

COUNCILMEMBER MATEO: Okay, thank you. I'm done, Chairman, thank you.

CO-CHAIR VICTORINO: Thank you. Chair Hokama, you had some questions?

COUNCILMEMBER HOKAMA: My question, Chairman, is regarding what you informed us at the beginning of this item, regarding that the County has already accepted certain things regarding this park. Is that a good understanding--

CO-CHAIR VICTORINO: Ms. Horcajo?

COUNCILMEMBER HOKAMA: --on this Committee's part, Ms. Horcajo?

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CO-CHAIR VICTORINO: Ms. Horcajo?

COUNCILMEMBER HOKAMA: If you could, please.

CO-CHAIR VICTORINO: Yeah. Sure. Go ahead.

MS. HORCAJO: . . . (*inaudible*) . . .

COUNCILMEMBER HOKAMA: I'm just trying to understand. Okay. Because the way the resolution before the Committee, that this is gonna be a privately owned and maintained park, so there's nothing being transferred to the County if we, you know, regarding this option of satisfying the ordinance regarding park improvements. So you know, with the latest proposal, through Mr. Hirano's client, dated October 7<sup>th</sup>--excuse me--October 2<sup>nd</sup>, we were told that in-lieu of the restroom and parking area, they're willing to pay half of the \$236,000 that would have been the total cash in-lieu fee for the subdivision if we opted for the money. So it's that little strip plus \$118,000 is . . . is what, I guess, is being presented to the Committee for consideration in lieu of the comfort station and parking requirements. Is that a good understanding as a Committee?

MR. MATSUI: You're correct in that a privately owned, privately maintained park does not need Council approval because, you know, there's no transfer.

COUNCILMEMBER HOKAMA: Right.

MR. MATSUI: However, we did enter into a unilateral agreement with the developer that they put up a letter of credit for the full amount (\$236,000) that would that's the amount of the in-lieu fee.

COUNCILMEMBER HOKAMA: Okay.

MR. MATSUI: And it said that in the event that the Council does not approve the waiver of the restroom and parking that the County could cash that amount and take that amount. So that's why. That's their deposit, I guess you would call that.

COUNCILMEMBER HOKAMA: Right.

MR. MATSUI: That's our security.

COUNCILMEMBER HOKAMA: Right.

MR. MATSUI: That . . . um . . . and so that, based on that, we signed off on the subdivision approval, and we said go ahead.

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COUNCILMEMBER HOKAMA: Okay. So if . . . uh . . . for our understanding, Mr. Matsui, the unilateral agreement that was executed by Mr. Hirano's client, was the unilateral agreement to satisfy a land use condition? Can you, can you give us some back..., understanding of this unilateral agreement, please?

MR. MATSUI: You know, the requirement for waiving of subdivision takes time. And . . . um . . . so the subdivider, you know, wanting final subdivision approval, you know, they entered into this thing so that either way it went, you know, they would satisfy their park appo..., park requirements, you know. So for us, it was, you know, sufficient.

COUNCILMEMBER HOKAMA: Okay.

MR. MATSUI: So if you guys didn't approve, the Council didn't approve the waiver, we'd get the money.

COUNCILMEMBER HOKAMA: Okay. So this was not a Council condition of . . . uh . . . regarding the project, itself, for any purposes?

MR. MATSUI: No.

COUNCILMEMBER HOKAMA: It was a departmental consideration worked with the applicant?

MR. MATSUI: Right. It's something that we've been doing, you know, consistently that, you know, in case the waiver is not approved . . . because many developers, you know, if they don't get a waiver, they'd rather give the money. So . . . um . . . you know, that was . . . that was how it ended up, yeah.

COUNCILMEMBER HOKAMA: Okay. Thank you, Mr. Matsui. Chairman, thank you very much.

CO-CHAIR VICTORINO: Thank you, Chair Hokama. Further questions? Co-Chair Medeiros?

CO-CHAIR MEDEIROS: Mahalo Chair. For the Department, I'm just trying to get a better understanding . . . uh . . . that the unilateral agreement that you just talked about. So we, as a Council, right now, the option is if we don't--let me see if I got this correct. We're gonna accept the entire amount of the money, which is the \$236,000, if . . . what happens?

MR. MATSUI: It's more like if you don't accept, if you don't waive the parking and restroom--

CO-CHAIR MEDEIROS: Okay.

MR. MATSUI: --then the developer will end up giving us the cash.

CO-CHAIR MEDEIROS: And if we accept, then there's no monetary--

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MR. MATSUI: Right.

CO-CHAIR MEDEIROS: --contributions--

MR. MATSUI: There's no money.

CO-CHAIR MEDEIROS: --to the development, the--

MR. MATSUI: That's correct.

CO-CHAIR MEDEIROS: --developer's side?

MR. MATSUI: That's correct.

COUNCILMEMBER HOKAMA: I thought was . . .

CO-CHAIR MEDEIROS: So is there?

COUNCILMEMBER MATEO: They're together.

CO-CHAIR MEDEIROS: Yeah. Is there another option that if we don't accept . . . and we don't accept the waiver and we don't accept the money, could that force the developer to build the comfort stations and the parking?

UNIDENTIFIED SPEAKER: It's right there.

CO-CHAIR MEDEIROS: And the reason I ask that is, seems like this comes at the tail end of the project; so how would we do something like not accepting the waiver and yet wanting the comfort stations and the parking? It seems like it's almost too late for us to do that. Is that true?

MR. MATSUI: That's correct. At this point, you have a choice of either waivering [*sic*] the restroom and parking and that would satis..., you know, they would then satisfy their park requirements with the park that you see. Or if you don't waiver [*sic*] it, we'd get the cash.

CO-CHAIR MEDEIROS: I see. Okay. Thank you, Parks. Thank you, Chair.

CO-CHAIR VICTORINO: Okay, thank you. Further discussion? Do anyone, does anyone have specific questions for the--

COUNCILMEMBER HOKAMA: Drainage easement . . . (*inaudible*) . . .

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CO-CHAIR VICTORINO: --developer's representative?

CO-CHAIR MEDEIROS: I do.

CO-CHAIR VICTORINO: Okay. Well before you ask, I'd like to . . . one thing I would like to mention to you, Mr. Hirano, that today in particular, I mentioned that earlier, that you went with some changes, you know, where the benches, you know, you're kinda indicating where benches, tables, new . . . uh . . . an additional gate will be put in and all that. Some Members expressed an interest--and I think I mentioned it to you that--we'd like to get a picture, a drawing (a schematic) so that we'd understand specifically . . . if these things were to be accepted and put in, where they would be placed because again, assumptions is one thing; but years go by and things change and maybe we . . . some of us won't be here to remember what we discussed. Yeah?

MR. HIRANO: Yes, Co-Chair Victorino. I believe in the transmittal of October 2<sup>nd</sup>, there was a site plan that was attached--

CO-CHAIR VICTORINO: Okay.

MR. HIRANO: --to it, which showed the proposed improvements of a picnic table on the mauka side and the park bench along Waipuilani Road.

CO-CHAIR VICTORINO: Okay. Looking at this now that that was just handed to me.

MR. HIRANO: And the . . .

CO-CHAIR VICTORINO: Yeah?

MR. HIRANO: Yes.

CO-CHAIR VICTORINO: Today, when we were talking, you indicated that there would be an entrance right along Waipuilani Road. And you, remember, you were standing there, and you kind of showed us around here, but I mean.

MR. HIRANO: Yes. If you look at the--

CO-CHAIR VICTORINO: The new gate? Where that says "new gate"?

MR. HIRANO: --new gate for the park bench.

CO-CHAIR VICTORINO: Okay.

MR. HIRANO: That is where the entrance would be.

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CO-CHAIR VICTORINO: That would be . . . and then you would have the bench adjacent (the ADA bench area)--

MR. HIRANO: That's correct.

CO-CHAIR VICTORINO: --off to the left. Yeah?

MR. HIRANO: Yes.

CO-CHAIR VICTORINO: Okay. Members, did you find that map (that schematic)? Okay. Thank you. Because that was brought to my attention and I . . . I had forgotten. Sorry.

MR. HIRANO: No problem.

CO-CHAIR VICTORINO: To be perfectly honest. Any questions now . . . uh . . . now--with that in your hands and so you have a better understanding--questions for the developer's representative? Mr. Medeiros.

CO-CHAIR MEDEIROS: Thank you, Mr. Chair. Mr. Hirano? In looking at the site this morning, I went to the mauka side of the area where there is already a gate; and apparently, in order for a person to utilize the proposed ADA picnic table bench, they would enter through that gate?

MR. HIRANO: I . . . uh . . .

CO-CHAIR MEDEIROS: This is the one that shows on the map closest to the mauka entrance.

MR. HIRANO: I don't, I'm sorry. I don't have the site plan in front of me.

CO-CHAIR MEDEIROS: Oh.

CO-CHAIR VICTORINO: Here!

MR. HIRANO: But I think there would be a new . . . I think it was a new gate on that, and I wasn't aware of a gate on the mauka side. I thought it was on the makai side.

CO-CHAIR MEDEIROS: There's one on the mauka side, too.

MR. HIRANO: Oh. Is there one on the mauka side as well?

CO-CHAIR MEDEIROS: That I walked through to get down into the park area. And my question was--

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MR. HIRANO: Yes.

CO-CHAIR MEDEIROS: --that on the mauka side . . .

MR. HIRANO: That . . . uh . . . excuse me, Co-Chair Medeiros. I think where the picnic table is shown, there would be a new entrance off of that corner. I don't think it comes off the existing gate.

CO-CHAIR MEDEIROS: Oh, okay. The map I'm looking at (or the drawing) doesn't show a gate there. It shows a gate further down more, beyond halfway of the park area--

MR. HIRANO: Yes.

CO-CHAIR MEDEIROS: --on the makai side.

MR. HIRANO: Yes.

CO-CHAIR MEDEIROS: That's the gate you're referring to?

MR. HIRANO: No. The . . . uh . . . if you look at the park bench, you could see the I guess schematically whatever it connects to the sidewalk; and at that point, it goes through the fence. So there's an accessible access sidewalk from where the sidewalk curves into the subdivision roadway (entrance road). There's a sidewalk that looks like it goes through the fence and to the picnic table.

CO-CHAIR VICTORINO: Okay.

CO-CHAIR MEDEIROS: I kinda see the sidewalk area that approaches the bench, but I don't see any indication of a gate there.

MR. HIRANO: It looks like it's a, it's a . . . just an open sidewalk, no gate; but it's a, I guess a throughway through the fence.

CO-CHAIR MEDEIROS: Okay. So there won't be a gate there. They'll just be an opening?

MR. HIRANO: Just an opening through there.

CO-CHAIR MEDEIROS: I see.

MR. HIRANO: Yeah.

CO-CHAIR MEDEIROS: My other question is, Mr. Hirano, when I walked down in the bottom of that park area, the ground was really soggy and wet.

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MR. HIRANO: Yes. Yes.

CO-CHAIR MEDEIROS: Now, is that the condition the park will be in when people are going to utilize it?

MR. HIRANO: I spoke with the engineer about the detention basin. He says that that should handle most storms, the capacity. So there should be no standing water in the basin. And I was also aware of when Co-Chair Victorino was walking as well. And when we were at the site visit, there was a woman who lived across the street, who had brought to the attention of the owner's representative that an irrigation line was broken on the . . . um . . . on the top of the mauka side of the park retention area. And I believe that that was probably causing the . . . uh . . . the wetness down in the basin, was the . . . the running of that water during, during the sprinkling . . . because it was quite wet and I was quite surprised at that myself . . . because it's been dry all week.

CO-CHAIR VICTORINO: Yeah.

MR. HIRANO: So, it was a broken irrigation line.

CO-CHAIR MEDEIROS: Okay. And my final question, Mr. Hirano, is that access to the bench and the table--the picnic table bench as it's described--will meet ADA requirements for people on wheelchairs or walkers and so forth; but the topography of the park will restrict their use in the rest of the park. Is that correct?

MR. HIRANO: That's my understanding. Yes, that is correct.

CO-CHAIR MEDEIROS: Okay. Thank you, Mr. Hirano. Thank you, Chair.

CO-CHAIR VICTORINO: Thank you, Co-Chair Medeiros. Any other questions for the developer's representative? I just have one more final. In looking at this more carefully, I see that the path on the mauka side again that leads to the bench . . . the bench and the table (the picnic table) yeah?

MR. HIRANO: Uh-huh.

CO-CHAIR VICTORINO: I see the thing go down and become--oh about a third of the way down--a circular ending.

MR. HIRANO: Yes.

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CO-CHAIR VICTORINO: So will that be a continuous running walkway? Is that gonna be a cemented walkway? Is that gonna be a gravel walkway? What, what, what kind of material are you intending to put there as far as from that? Well I guess from the top, from the sidewalk to the benches would have to be solid. Right?

MR. HIRANO: Yes. From the sidewalk to the picnic table area would be solid, and I believe that it was going to be like a red cinder--

CO-CHAIR VICTORINO: The . . .

MR. HIRANO: --that would allow some perk, percolation through it.

CO-CHAIR VICTORINO: Yeah, okay. For wheelchairs and ADA compliant to the point?

MR. HIRANO: No, it wouldn't be. That portion of it, from the picnic table down into the basin to the turnaround--

CO-CHAIR VICTORINO: Yes.

MR. HIRANO: --would not be ADA compliant.

CO-CHAIR VICTORINO: Okay.

MR. HIRANO: That portion of it.

CO-CHAIR VICTORINO: Okay, 'cause . . . kind of . . . when I look at it, it's kinda misleading. I mean I'm trying to figure it out, and there was no real distinction between how these two. So from the sidewalk again to the picnic table would be ADA compliant?

MR. HIRANO: That's correct. Yes.

CO-CHAIR VICTORINO: And from that point down to that circular turnaround would be some kind of . . .

MR. HIRANO: It's . . . um . . . it's a cinder path.

CO-CHAIR VICTORINO: Yeah, yeah, cinder.

MR. HIRANO: It's a cinder path.

CO-CHAIR VICTORINO: Yeah. It would be packed down so that people could use it and walk and all that.

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MR. HIRANO: That's correct.

CO-CHAIR VICTORINO: Okay. Thank you. I just wanted to make sure that that was--

MR. HIRANO: Yes.

CO-CHAIR VICTORINO: --clearly defined. Yeah?

MR. HIRANO: Yes.

CO-CHAIR VICTORINO: Other questions for the representative? Yes, Member Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. Mr. Hirano, as far as the irrigation, is that potable water that's being utilized?

MR. HIRANO: My understanding is that is non-potable water being utilized. That there was a sign that cautioned people in, that use the area, that the irrigation lines are non-potable water for irrigation.

COUNCILMEMBER PONTANILLA: Do you know if they're utilizing the R1 water that comes from the Kihei Wastewater Plant?

MR. HIRANO: I'm not sure of any other source of non-potable water in that area; so I would just assume that it would be. I haven't got that confirmed.

COUNCILMEMBER PONTANILLA: Okay. We'll find out.

CO-CHAIR VICTORINO: Yeah.

COUNCILMEMBER PONTANILLA: Thank you.

CO-CHAIR VICTORINO: Yeah. And I was very pleased to see that those signs were there indicating that it was non-potable water that was being used for irrigation purposes. So we appreciate that, especially in these dry times. But try get the . . . the irrigation line fixed 'cause it was awful soft when I was walking . . . (*chuckled*) . . . and I was thinking boy, we haven't had rain for so--

MR. HIRANO: . . . (*chuckled*) . . . I know.

CO-CHAIR VICTORINO: --how many weeks and I sank down into the ground. Yeah, Bill? I mean wasn't it really soft? And I'm like whoa, this is strange.

MR. HIRANO: Yeah.

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CO-CHAIR VICTORINO: Any other comments? Or else, I'll let the representative from the developer go. Thank you, Mr. Hirano. I appreciate it.

MR. HIRANO: Thank you, Co-Chair Victorino.

CO-CHAIR VICTORINO: Thank you. Any other questions for the Department? Ms. Horcajo, would you have--I'd like to ask you this question before anyone else. You did, in passing, make a suggestion and I wanted the whole Committee and as well as the public to hear your suggestion about alternative views beyond and, you know, the Committee . . . meeting in the community and other alternatives. Can you, can you elaborate a little bit more on what you were speaking to me and some of the Members about?

MS. HORCAJO: Thank you, Co-Chair. In looking at the site today and that there is a community now that is living in that area, it could be possible to meet with the community association and we could perhaps ask the developer's representative to assist us with setting up a meeting time to find out if the community has some desires for that particular park and area. I can see by the two calls that you folks received today that there is an active community living there who cares, is caring and concerned about the particular park. It may be that the community would want to initiate a dog-park area since it is fenced. If that were the case, then the picnic table may not be something that they would want if it were open, it may be some of the original information that I have in my file had indicated that there was some discussion regarding a playground equipment. At that point, it . . . looking at the park, that does not seem appropriate. However, meeting with the community association may be a way to identify a particular need or use for that area.

CO-CHAIR VICTORINO: Thank you, Ms. Horcajo. Any other discussion or questions for the Administration? Co-Chair Medeiros.

CO-CHAIR MEDEIROS: Thank you, Chair. Director Horcajo, is it the intention that this park, although it will remain private in ownership and maintenance, it's open as a public park? It's open to the public for use?

MS. HORCAJO: That would be the condition for this particular piece. Yes.

CO-CHAIR MEDEIROS: I see. So when you speak of the community association, are you speaking about the owners that are within that project, or the public in general--the people living across the street and in other areas of that park?

MS. HORCAJO: The community association currently maintains that area and they pay for that maintenance of that area. However, if it is privately owned and maintained but available for public because it was in for park assessment fees, it would make sense that the community association would open their doors to additional comment, I would think. However, I would

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think that the community association would be the one, at this point, in control of the meeting. But since it was with . . . for park assessment credit, if that's the way we're proceeding and do not choose to take 100 percent of the in-lieu fee, then we would definitely want comment from the community, which includes the neighbors across the street.

CO-CHAIR MEDEIROS: Okay. My final question is . . . uh . . . if it is indeed will be open for public use . . . *(end of tape, start 1B at 11:05 a.m.)* . . . can you eliminate the ADA requirements, even though it's private but open for public use . . . because you mentioned not having to put the bench and accessibility to that bench? If you declare that it's open to the public, can you eliminate ADA requirements?

MS. HORCAJO: As I understand it, the ADA requirements are for any facility or item that is built in the park. So if the bench, benches or picnic tables are there, they would have to be accessible. The path itself it does not sound like would meet those requirements. One, 'cause it's gravel, and the slope would not accommodate that. So I would say that the bench and the table could be built to meet those requirements and meet those . . . that ADA statute.

CO-CHAIR MEDEIROS: Right. But you say that if the association decides Okay, we're not gonna, they don't wanna put the benches because they wanted to make it a dog park but it is open to the public, how do you, how does . . . um . . . physically-challenged people use that park, as members of the public, without a bench or without walkways and so forth that's ADA compliant?

MS. HORCAJO: I'll defer that to Pat and get back with you, unless Pat can address that.

MR. MATSUI: The ADA requirements, it does not require that you have wheelchair access to the entire park. Okay? The requirement is from the public street or the sidewalk to whatever amenities you put in the park. So if you put a picnic table at the bottom of the slope, you would have to have an accessible sidewalk kneading, you know, very minimal slopes to get to it.

CO-CHAIR MEDEIROS: Right.

MR. MATSUI: Okay. If you put the picnic table on the top then you won't have to do such a long ramp because it's already up there, pretty level with the sidewalk.

CO-CHAIR MEDEIROS: I see.

MR. MATSUI: So whatever amenity you put there, that's what you need to make accessible to. So if it's just grass, there's no requirement; but if you put a picnic table, a bench, a playground, that would have to be. You would have to have an accessible path from the sidewalk to the facility.

CO-CHAIR MEDEIROS: So if the park--being a passive park--doesn't have any amenities, there's no ADA requirements?

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MR. MATSUI: That's correct.

CO-CHAIR MEDEIROS: Okay. Thank you, Department. Thank you, Chair.

CO-CHAIR VICTORINO: Thank you. And again, the ideas that were being floated around were brought up by the Director, so I thought it'd be important for everybody to hear. Any other comments? Member Pontanilla.

COUNCILMEMBER PONTANILLA: Maybe for Corporation Counsel. If this park remains private, and maintained privately, knowing that what I heard that the public can utilize this park, what is the liability should anything happen to the County?

CO-CHAIR VICTORINO: Mr. Ueoka?

MR. UEOKA: Thank you. Technically, we shouldn't have much liability. However, that won't keep someone from bringing us into suit; but we don't own the park. We don't maintain the park. Our only connection with it is we'll have a recorded, it'll be recorded, where we can enforce the maintenance in perpetuity, so I don't believe we expose ourselves any extra.

COUNCILMEMBER PONTANILLA: Okay, good. Thank you.

CO-CHAIR VICTORINO: Thank you, Mr. Pontanilla. Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, thank you. I . . . uh . . . I believe Corporation Counsel is very accurate. The State has given itself and private landowners, who utilize it for recreational purposes, indemnification from certain types of lawsuits. So you know, I can appreciate Mr. Pontanilla's concern of liability and responsibility. Unfortunately, the law protects the private owners and the State; it does not protect the County. So that was a reasonable concern on the Committee's part. I would say though, Mr. Chairman, I wouldn't have a problem taking the \$236,000, placing it into the district park fees account to be utilized because we are all well aware of the tremendous amounts of financial resources we will be needing to appropriate into the South Maui District for the regional park and related amenities and facilities; and we're looking in the *big* amounts--tens of millions of dollars. And maybe that would be a better option for this Committee to take to be able to spread and benefit more people in the region than just those in this specific subdivision. And so I would ask that the Committee take that into consideration because I still believe that that would be a reasonable option for the Committee to recommend to the full Council. Thank you, Mr. Chairman.

CO-CHAIR VICTORINO: Thank you. And Mr. Hokama, you're referring to the letter dated October 2, 2007 for which Ms. Horcajo wrote to us "cash in-lieu"?

COUNCILMEMBER HOKAMA: October 2<sup>nd</sup>, Mr. Chairman, you're correct.

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CO-CHAIR VICTORINO: Yeah, okay.

COUNCILMEMBER HOKAMA: Where she informs us that the total amount for the subdivision is \$236,000.

CO-CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: And so that's an option I would just have the Committee consider prior to making its determination, Chairman. Thank you.

CO-CHAIR VICTORINO: Thank you. Any other comments from the Committee Members? Vice-Chair Mateo.

COUNCILMEMBER MATEO: Chairman, thank you. And I concur with Member . . . uh . . . with Chairman Hokama. I think the actual site visit itself really made that kind of a difference in being able to take a look at an area that, in my own summation, is not a park. It is part of landscaping for this particular development. We . . . there still exists concerns that this is a drainage basin; and the fact that it is just a narrow strip of parcel, I see very little use for it, other than to be a drainage basin. There's also concerns regarding the homeowners association that'll be responsible for this particular park, especially when it includes the general public's use as well. I don't know how prosperous or, you know, how wealthy this community is to--in perpetuity--be responsible for the upkeep and the maintenance of a park that not only takes care of its own subdivision residents, but members of the general public. So I think by us being able to collect on the \$236,000 and put it to better use--in looking at other properties and other parks that's being either looked at, designed, or planned for in the South Maui District--would be a much better use than trying to deal with the parcel that we're looking at today. Thank you, Chair.

CO-CHAIR VICTORINO: Thank you, Vice-Chair Mateo. I'm going to ask for a five-minute recess just because I'd like to confer with Corp. Counsel and the Department to come up with some language to incorporate what we're discussing right now. So this meeting stands in adjournment till . . .

COUNCILMEMBER MATEO: No!

CO-CHAIR MEDEIROS: Recess.

COUNCILMEMBER MATEO: Recess.

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CO-CHAIR VICTORINO: I mean "recess". I apologize, my wrong words. . . . (*chuckled*) . . . Stand in recess till 11:20. . . . (*gavel*) . . .

**RECESS:**           **11:16 a.m.**

**RECONVENE:**   **11:24 a.m.**

CO-CHAIR VICTORINO: . . . (*gavel*) . . . The meeting of Public Works and Facilities--

CO-CHAIR MEDEIROS: Your mike. (*NOTE: Co-Chair Victorino is speaking, while his microphone is turned away from him.*)

CO-CHAIR VICTORINO: --Committee will . . .

CO-CHAIR MEDEIROS: Your mike.

CO-CHAIR VICTORINO: Oh! (*NOTE: He turned his microphone towards him.*) The meeting of the Public Works and Facilities Committee will reconvene. We have sat and I guess I'm going to ask the Committee for some directions. We've heard the discussion to this point as far as what we would like to see done; and I think the consensus from the group is that we would prefer not accepting or making no acceptance on the waiver for public parking and a comfort station for this particular linear park--for lack of a better term--but I would need some direction from the Committee Members in how we would craft this, so that we can close this discussion and move on. And I think this is where I'd ask for some direction from the Committee. Mr. Chair, Council Chair Hokama?

COUNCILMEMBER MATEO: Take the money.

COUNCILMEMBER HOKAMA: Mr. Chairman, thank you. And . . . uh . . . if you would permit me--before I give you a suggestion from my part to offer to the Committee--I would just want to ask our resource people if . . . a question, please?

CO-CHAIR VICTORINO: Go ahead, Chair Hokama.

COUNCILMEMBER HOKAMA: And maybe it's for our Corporation Counsel this morning. One of my concerns is that it is my understanding--and I'll be very frank and open about it. This is my understanding; I don't know about my colleagues. But the primary purpose of this trip that we're talking about is not what is before us regarding a park, it was to satisfy drainage requirements of the project; and that also it is now being asked for us to consider it to also satisfy park requirements from this subdivision, which we were told was 11,800 per unit times 20 units and that is how the Department came up with its, a number \$236,000 to this Committee. And you know, we discussed about State statute and the . . . uh . . . immunity of liability for State and private property owners for recreational purposes, Mr. Corporation

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Counsel. Well since the primary purpose is drainage and it is mauka makai--and we know which way the water does flow--should a drainage incident occur, and it's traced back to this location, I just have a question of "who would be the responsible party"? The County that gave approval, even if it's still privately owned? Or is the homeowners association and the property owners that make up that association be responsible for damages because of a situation with the drainage that possibly could damage adjacent or abutting properties? And hopefully, that scenario never happens; but we've done enough with Wainee (West Maui) and we've been paying claims regarding some drainage issues and damages. Do you have anything you could share with the Committee at this time, please?

MR. UEOKA: I'd like to say that because it's a privately owned and maintained park and also a privately owned and maintained drainage basin, and it's the association and developer's--I'm not sure of the association--but it's the developer's choice to have it also be utilized as a park, the burden would fall upon the association; but I will research the matter and get back to you.

COUNCILMEMBER HOKAMA: So we could--well my point is that then I hope the developers made the association aware that potentially it could be responsible for huge financial payouts to satisfy potential damage should it, should the situation that I had described actually occur?

MR. UEOKA: Yes. That would certainly be the . . . uh . . . thought on our part, that because it is privately owned and maintained by the association, that it would be their responsibility and their liability--I should say--if there was a catastrophe of that type.

COUNCILMEMBER HOKAMA: Okay, thank . . . thank you for your comment, Corporation Counsel. Chairman, I would say that one option for the Committee that I would recommend for your consideration and the Members would be: 1. to file this Item 31 because it is specific regarding a request for approving a waiver of park requirements for a privately owned and maintained park pursuant to our Code (Title 18) in that we would, in the committee report, recommend to the Department of Parks and Recreation Director Horcajo--and . . . and what are, what other appropriate personnel that needs to be informed--that we would recommend that the County instead accept the total cash in-lieu fee for the subdivision to satisfy the County's requirements on park dedication. That would be my suggestion to you, Chairman.

CO-CHAIR VICTORINO: Thank you, Chair Hokama. Any other suggestions? If not, then . . . I would then recommend to the Committee the filing of this matter (PWF-31) and the notification to the various Departments that are involved with this matter that we would now, I guess, recommend . . . or request--what, what, what would be the wording I would use, Mr. Hokama?

COUNCILMEMBER HOKAMA: Chairman, I would say that we would strongly suggest--

CO-CHAIR VICTORINO: "Strongly suggest".

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COUNCILMEMBER HOKAMA: --that the Department take the cash in-lieu option. And I would amend it by saying "besides in the committee report, if you would allow the Committee to request, through you (as the Co-Chair in charge of this item) to write a letter to the Director citing formally the Committee's request or consideration". And therefore, she can move forward on . . . on proper documentation.

CO-CHAIR VICTORINO: Okay.

COUNCILMEMBER HOKAMA: Thank you.

CO-CHAIR VICTORINO: That can be done. So just so that I get the right verbiage and so that we would be recommend . . . I would be recommending the filing of PWF-31 and notifying the necessary agencies that our . . . uh . . . we "strongly suggest" that in lieu of acceptance, we would take the cash--

COUNCILMEMBER HOKAMA: Just . . .

CO-CHAIR VICTORINO: --as indicated.

COUNCILMEMBER HOKAMA: Yeah.

CO-CHAIR VICTORINO: Yes. Is that fine with everybody?

CO-CHAIR MEDEIROS: I have a . . .

CO-CHAIR VICTORINO: Sure; go ahead.

CO-CHAIR MEDEIROS: If Council Chair Hokama is done, then I have a question.

COUNCILMEMBER HOKAMA: Thank you, Chair.

CO-CHAIR VICTORINO: Go--okay. Go ahead, Council . . .

CO-CHAIR MEDEIROS: Yeah. So if I want to be clear. If we file the item, does that mean we're approving the waiver, Corp. Counsel?

COUNCILMEMBER HOKAMA: No.

CO-CHAIR MEDEIROS: No? It's . . .

MR. UEOKA: Oh. No.

CO-CHAIR MEDEIROS: Okay.

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MR. UEOKA: We're not waiving. You guys are not waiving.

CO-CHAIR MEDEIROS: And we're not denying or approving? What . . . what is the action by saying "we file the item"?

COUNCILMEMBER HOKAMA: We denying the request.

CO-CHAIR MEDEIROS: We denying?

MR. UEOKA: Yes.

CO-CHAIR MEDEIROS: Okay. Okay. And my second question is, Corp. Counsel, would that relieve any obligation on behalf of the developer to contribute the money that's gonna be requested?

MR. UEOKA: No.

CO-CHAIR MEDEIROS: He still . . . the developer still have that obligation?

MR. UEOKA: They still need to satisfy Section 18.16.320 of the Maui County Code.

CO-CHAIR MEDEIROS: Thank you, Corp. Counsel. Thank you, Chair.

CO-CHAIR VICTORINO: Okay. So I guess what I'll do is this. I will move for the filing of PWF-31.

CO-CHAIR MEDEIROS: So moved.

COUNCILMEMBER PONTANILLA: Second.

COUNCILMEMBER HOKAMA: Second.

CO-CHAIR VICTORINO: It's been moved by Co-Chair Medeiros, seconded by Member Pontanilla. Any further discussion on this matter? Sensing none, all those in favor, say "aye".

COUNCIL MEMBERS VOICED AYE.

CO-CHAIR VICTORINO: Opposed?



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**PWF-54 ACCEPTING DEDICATION OF A ROAD WIDENING LOT FOR THE YATES  
SUBDIVISION (WAILUKU) (C.C. No. 07-273)**

CO-CHAIR MEDEIROS: The Committee is in receipt of County Communication No. 07-273, from the Director of Public Works, transmitting a proposed resolution entitled "ACCEPTING DEDICATION OF A ROAD WIDENING LOT FOR THE YATES SUBDIVISION, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE". The purpose of the proposed resolution is to accept the dedication of a road widening lot in Wailuku, Maui, lot . . . for Lot 2-C along Malaihi Road, TMK: (2) 3-2-16:portion of 010. At this time, the Chair would welcome any public testimony and . . . uh . . . looking into the gallery, we have no one up there; and checking with Secretary Martins, not, no one signed up. So at this time, without objection, the Chair would like to close public testimony for . . .

COUNCIL MEMBERS VOICED NO OBJECTIONS.

CO-CHAIR MEDEIROS: Thank you, Members. At this time, I'd like to now ask the Director of Public Works, Director Arakawa, to provide an overview of this matter.

MR. ARAKAWA: Thank you, Mr. Chair. This item pertains to a road widening lot for the Yates Subdivision along Malaihi Road in Waiehu. The subdivision was granted final approval on August 21, 2007. The road widening lot proposed to be dedicated is 912 square feet in size and it's a long triangular shape and the width is 6.91 feet at its widest and it tapers down to zero. The improvements are complete and were approved by the Department of Public Works on August 10, 2007, and there were some water improvements put in with the subdivision. These improvements were approved by the Department of Water Supply on July 26, 2007. As allowed under Section 18.20.040 of the Code, the subdivider has deferred roadway improvements by completing the requirements of a Three-lots-or-less Subdivision Agreement. A resolution, entitled "ACCEPTING DEDICATION OF A ROAD WIDENING LOT FOR THE YATES SUBDIVISION, PURSUANT TO SECTION 3.44.015, MAUI COUNTY CODE", has been drafted and is in your binder. The Committee's review and consideration of the proposed resolution is respectfully requested.

CO-CHAIR MEDEIROS: Thank you, Director Arakawa. Members, the floor is now open for discussion or for questions for the Director. Seeing no questions at this time . . .

COUNCILMEMBER MATEO: Chairman?

CO-CHAIR MEDEIROS: Yes. Member Mateo?

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COUNCILMEMBER MATEO: Chairman, let me ask the Director. Your preference, as listed on the fact sheet, the subdivider has deferred improvements by completing the requirements of a subdivision agreement. That means that he does not have to go back and complete any of the original improvements because he has chosen to--well I don't know. Does he have to complete the initial improvements?

MR. ARAKAWA: The Code currently allows subdividers of three lots or less, which applies in this case, to apply for a deferral of the frontage improvements and that's what the subdivider here has elected to do.

COUNCILMEMBER MATEO: The deferral does not mean he does not have to do it.

MR. ARAKAWA: That's correct.

COUNCILMEMBER MATEO: So is there some kind of a timetable established that he will have to complete the required improvements?

MR. ARAKAWA: No. Well generally, the improvements . . . uh . . . there's no timeframe per se on the improvements. What we've basically been telling people on these three-lots-or-less situations is that we . . . when we do the ultimate roadway improvements for that particular road, we would come back and enforce the agreement; collect the pro-rata share; and then basically do all the improvements all at once. Because from our standpoint, if we just choose an arbitrary time to enforce the agreement, it'll be basically for a very short frontage along, you know, the entire road. So from a transportation standpoint, it really wouldn't make sense to enforce, you know, just that short stretch at one time.

COUNCILMEMBER MATEO: Okay. So the primary improvement then, in this particular case, is roadway improvements?

MR. ARAKAWA: No, they're not putting in any roadway improvements. They're proposing to dedicate the road widening lot, itself. That's basically just the roadway shoulder; and the Water Department also required water hookup, so that was . . . uh . . . those improvements were completed.

COUNCILMEMBER MATEO: Okay. So what was deferred?

MR. ARAKAWA: Basically, it's just the shoulder improvements.

COUNCILMEMBER MATEO: Okay.

MR. ARAKAWA: In this particular case, it's just the shoulder improvements.

COUNCILMEMBER MATEO: Thank you. Thank you, Chairman.

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CO-CHAIR MEDEIROS: Thank you, Member Mateo. Any further questions from the Members?  
Member Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you. Director, do you know when, or have any idea  
when that particular Malaihi Road will be improved? Or is that under the horizon, in the near  
future?

MR. ARAKAWA: No. The improvements of Malaihi Road is really not in the six-year CIP. It's  
basically a Rural/Ag road of which we have many in the County. So it's something . . . um . . .  
at least not in the six-year CIP; but it's something that probably will resurface first before we  
actually do the actual widening and all the improvements.

COUNCILMEMBER PONTANILLA: If and when we do improve, do you envision curb and gutters?  
Or like, you know, any other Rural road, is strictly shoulder improvements?

MR. ARAKAWA: The actual improvements would depend on the abutting Land Use & Zoning. So if  
it stays Rural and Ag, curbs and gutters, and sidewalks would not be required. So the character  
would remain essentially the same as it is currently.

COUNCILMEMBER PONTANILLA: Okay, thank you. Thank you, Chair.

CO-CHAIR MEDEIROS: Thank you, Member Pontanilla. Any further discussion or questions?  
Seeing none, the Chair would like to give his recommendation at this time.

CO-CHAIR VICTORINO: Recommendation?

CO-CHAIR MEDEIROS: Thank you, Members. The Chair will entertain a motion to recommend  
adoption of the proposed resolution and the filing of the communication.

COUNCILMEMBER PONTANILLA: So moved.

COUNCILMEMBER MATEO: So moved.

COUNCILMEMBER HOKAMA: Second.

CO-CHAIR MEDEIROS: Okay. Moved by Member Mateo and seconded by Council Chair Hokama.  
Any further discussion?

CO-CHAIR VICTORINO: None.

COUNCILMEMBER PONTANILLA: No.

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CO-CHAIR MEDEIROS: Seeing none, we'll take a vote on the motion. All those in favor of the motion, say "aye".

COUNCIL MEMBERS VOICED AYE.

CO-CHAIR MEDEIROS: Opposed?

**VOTE: AYES: Councilmembers Hokama, Mateo, and Pontanilla;  
and Co-Chairs Medeiros and Victorino.**

**NOES: None.**

**ABSTAIN: None.**

**ABSENT: None.**

**EXC.: None.**

**MOTION CARRIED.**

**ACTION: ADOPT RESOLUTION AND FILE COMMUNICATION.**

CO-CHAIR MEDEIROS: Okay. The motion is adopt, carried at five "ayes". Okay. We have no further business or items on our agenda, Members. Before I adjourn the meeting, are there any announcements any Members would like to make?

CO-CHAIR VICTORINO: None.

CO-CHAIR MEDEIROS: Okay. Seeing none, I just would like to make a quick announcement and wish everybody out there a Happy Halloween. And to the children and the parents that are gonna be trick-or-treating, please be safe out there. Be sure you can be seen by the vehicles on the road. Be sure you have flashlights, hopefully, bright-colored costumes such as the Chair.

COUNCIL MEMBERS: . . . (*chuckled*) . . .

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CO-CHAIR MEDEIROS: And . . . (*chuckled*) . . . and that's all the announcements for now. So with no further announcements, this meeting of the Public Works and Facilities Committee of October 31, 2007 is now adjourned.

**ADJOURN: 11:45 a.m.**

APPROVED BY:



BILL KAUAKEA MEDEIROS, Co-Chair  
Public Works and Facilities Committee

APPROVED BY:



MICHAEL P. VICTORINO, Co-Chair  
Public Works and Facilities Committee

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Transcribed by: Pauline Martins