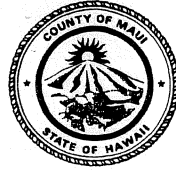


ALAN M. ARAKAWA
Mayor




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November 15, 2006

MEMORANDUM

T O: Jo Anne Johnson, Chair
Parks and Economic Development Committee

F R O M: John D. Kim 
Deputy Corporation Counsel

SUBJECT: **ACCEPTING DONATION FROM MAKILA LAND COMPANY, LLC, TO THE DEPARTMENT OF PARKS AND RECREATION (PED-37)**

Introduction.

The purpose of this memorandum is to respond to your memorandum, dated September 6, 2006, requesting legal advice as to "whether Makila Land Company, LLC's voluntary donation of \$24,903.05 to the Department of Parks and Recreation for County parks programs can be 'gifted' to a nonprofit organization, such as Lokahi Pacific, in order to fulfill a portion of the \$50,000 park assessment requirement for Lokahi Pacific's Lokahi Kuhua Subdivision."

Summary of facts.

Lokahi Pacific is the developer of the Lokahi Kuhua Subdivision in Lahaina ("Subdivision"). The Subdivision was marketed to persons with incomes at or below 80% of Maui County median income. The Subdivision is not a project subject to Chapter 201G, Hawaii Revised Statutes ("HRS"), pertaining to housing and community development.

As a condition of subdivision approval, Lokahi Pacific was required to provide land in perpetuity for park and playground purposes. The park assessment for the Subdivision was 4,500 square feet of land. The Subdivision could be designed to accommodate only a 4,308 square foot park; therefore, Lokahi Pacific developed a 4,308 square foot park and paid the County of Maui \$2,133.12 in lieu of the required balance of land.

Pending in your committee is a related agenda item, PED-21, pertaining to a request for waiver of park dedication requirements

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for the Subdivision.¹ Your committee conducted a site visit in connection with item PED-21 and observed that the proposed park was fully fenced, grassed, and irrigated; however, the park contains a drainage grate and serves as a retention basin designed for a 25-year storm.

Your committee discussed various means of providing Lokahi Pacific with relief with regard to its park assessment, including the waiver of the assessment by Council and payment of cash in lieu of land for a park. Your committee was advised orally by this Department that the Council could waive the park assessment imposed under Section 18.16.320, Maui County Code, if the Subdivision qualified as a 201G project.

Makila Land Company, LLC, is the developer of Makila Plantation - Phase II, a subdivision in Launiupoko consisting of 24 lots. The park assessment for the Makila Plantation - Phase II subdivision was \$96.95. Pursuant to an Agreement Regarding Park Dedication, by and between Makila Land Company, LLC, and the County of Maui, dated October 6, 2004, Makila Land Company, LLC, has agreed to pay the additional sum of \$24,903.05 as a voluntary contribution to the Department of Parks and Recreation for County's parks programs.

Analysis and discussion.

Neither HRS Section 46-6, regarding parks and playgrounds for subdivisions, nor Section 18.16.320, Maui County Code, regarding subdivision park dedication requirements, provide explicitly for the transfer of park dedication credits from one subdivider to another subdivider. The Maui County Code has no provisions allowing the Department of Parks and Recreation to "gift" a monetary donation to a nonprofit organization so as to fulfill the nonprofit organization's park assessment obligations under Section 18.16.320, Maui County Code.

Consequently, no explicitly authorized procedure exists for the County of Maui to gift Makila Land Company, LLC's monetary donation to Lokahi Pacific so as to satisfy the latter's park assessment. However, other possible arrangements could be considered by the parties to achieve the intended result. Alternative courses of action include, in no particular order:

¹ Agenda item PED-21 includes a draft resolution "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 Lokahi Kuhua Subdivision, Lahaina, Maui, Hawaii".

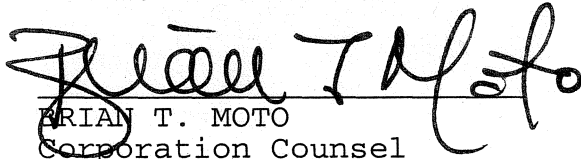
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- Request that Makila Land Company, LLC, donate the \$24,903.05 directly to Lokahi Pacific, rather than to the County of Maui, and allow Lokahi Pacific to use the donation to satisfy its park assessment.²
- Amend the Agreement Regarding Park Dedication and restrict the use of the \$24,903.05 donation to satisfying all or part of Lokahi Pacific's park assessment. This option would also require revision of the draft Council resolution accepting the donation from Makila Land Company, LLC.³
- Amend Section 18.16.320, Maui County Code, to provide procedures for the transfer of park dedication credits and the granting of park dedication credits to a nonprofit organization based on donations made to the County by another person or entity.

cc: Glenn Correa, Director of Parks and Recreation
John Buck, Deputy Director of Parks and Recreation
Traci F. Villarosa, First Deputy Corporation Counsel
Michele White, Legal Assistant

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APPROVED FOR TRANSMITTAL:


BRIAN T. MOTO
Corporation Counsel

² A direct donation from Makila Land Company, LLC, to Lokahi Pacific would, of course, require the assent of both parties and amendment of the Agreement Regarding Park Dedication.

³ Chapter 3.56, Maui County Code, pertaining to gifts and donations, does not explicitly address receipt of restricted cash donations; however, given that cash donations must be approved by Council resolution, the Council presumably may accept such donations subject to donor-imposed conditions. See Section 3.56.030, Maui County Code.