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LETTER OF TRANSMITTAL

To: Mr. Daniel E. Orodenker
Executive Officer
Land Use Commission
State of Hawaii
P. O. Box 2359
Honolulu, Hawaii 96804-2359

DATE: July 19, 2013

RE: Docket No. A12-796; Waikoloa
Industrial Investment, LLC

2013 JUL 23 A 8:00
LAND USE COMMISSION
STATE OF HAWAII

Mailed Hand Delivered

THE FOLLOWING IS (ARE) TRANSMITTED HEREWITH:

<u>COPIES</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	07/10/13	Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Urban, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-49470663 (certified copy)

<input type="checkbox"/> For Your Information	<input type="checkbox"/> For Review and Comment
<input type="checkbox"/> For Your Files	<input checked="" type="checkbox"/> For Necessary Action
<input type="checkbox"/> Per Your Request	<input type="checkbox"/> For Signature and Return (Black Ink)
<input type="checkbox"/> Per Our Conversation	<input type="checkbox"/> See Remarks Below

REMARKS:

By


Gregory J. Garneau/mmi

Enclosure(s)

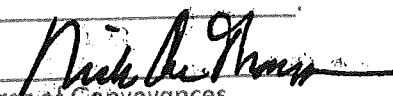
4847-9927-5540.1.065195-00001

Doc A-49470663

July 18, 2013 10:45 AM

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,

as



Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

LAND COURT

REGULAR SYSTEM

2013 JUL 23 A 8:00

LAND USE COMMISSION
STATE OF HAWAII

Return By Mail Pick-Up To:

CARLSMITH BALL LLP
One Main Plaza, Suite 400
2200 Main Street
Wailuku, Maui, Hawaii 96793

Attention: Gregory J. Garneau
Telephone: (808) 242-4535

TITLE OF DOCUMENT:

**DECLARATION OF CONDITIONS
APPLICABLE TO AN AMENDMENT OF
DISTRICT BOUNDARY FROM AGRICULTURAL TO URBAN**

PARTIES TO DOCUMENT:

DECLARANT: WAIKO INDUSTRIAL INVESTMENT, LLC
P. O. Box 598
Wenatchee, Washington 98807

TAX MAP KEY(S): (2) 3-8-007:102

(This document consists of 12 pages.)

**DECLARATION OF CONDITIONS
APPLICABLE TO AN AMENDMENT OF
DISTRICT BOUNDARY FROM AGRICULTURAL TO URBAN**

THIS DECLARATION OF CONDITIONS is made this 10th day of July, 2013, by WAIKO INDUSTRIAL INVESTMENT, LLC, a Washington limited liability company, whose mailing address is P. O. Box 598, Wenatchee, Washington 98807, as Petitioner in State of Hawaii Land Use Commission Docket No. A12-796 (hereinafter called the "Declarant" or "Petitioner");

W I T N E S S E T H:

WHEREAS, Declarant will be developing certain real property situate at Waikapu, Wailuku, County of Maui, State of Hawaii, specifically identified as Tax Map Key No. (2) 3-8-007:102, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference, (hereinafter called the "Petition Area"); and

WHEREAS, the State of Hawaii Land Use Commission (hereinafter called the "Commission"), by Findings of Fact, Conclusions of Law, and Decision and Order filed on May 3, 2013, in said Docket No. A12-796 (hereinafter called the "Decision and Order"), amended the State Land Use district boundaries and reclassified the Petition Area from the State Land Use Agricultural District to the State Land Use Urban District, subject to certain conditions enumerated therein; and

WHEREAS, pursuant to Section 15-15-92 of the Commission's Rules, the conditions imposed by the Commission in said Docket No. A12-796 shall be recorded at the Bureau of Conveyances of the State of Hawaii;

NOW, THEREFORE, Declarant hereby declares that the Petition Area described in said Exhibit "A", shall be subject to the following conditions, imposed by the Commission in Docket No. A12-796:

1. **Highway and Road Improvements.** Petitioner shall abide by, complete and/or submit the following:

a. The TIAR shall be revised and resubmitted to the DOT Highways Division for review and acceptance prior to zone change approval.

b. Petitioner shall fund, construct and implement the Project's local/direct access improvements recommended in the TIAR accepted by the DOT for the Waiko Road intersections with Honoapiilani Highway and Kuihelani Highway.

c. Petitioner shall provide fair share contribution to the cost of regional improvements to State highways. These improvements could be on Honoapiilani Highway and/or on Kuihelani Highway.

d. The revised TIAR shall be updated every three (3) years until build out. If the Project is delayed beyond 2015, trips generated by A&B Properties, Inc.'s development and any other committed developments in the vicinity that are developed before the build out of the Project shall be included as background traffic in the updated TIAR.

e. Petitioner shall include a provision in each of its sales, lease, and conveyance documents, whereby each person who may from time to time own the Petition Area, any portion thereof, or hold any other interest therein or occupy any improvements thereon, makes the same acknowledgement and the following agreements in favor of the State of Hawaii:
(a) such person assumes complete risk of and forever releases the State of Hawaii from all claims for damages and nuisances occurring on the Petition Area and arising out of or related highway

traffic noise from Kuihelani Highway and (b) such person waives any right to (i) require the State of Hawaii to take any action to eliminate or abate any highway traffic noise from Kuihelani Highway; and (ii) file any suit or claim against the State of Hawaii for injunction or abatement of any highway traffic noise from Kuihelani Highway and for any damages or other claims related to or arising there-from. The provision shall be incorporated into the appropriate title documents and recorded at the Bureau of Conveyances.

2. **Notification of Proximity to Kahului Airport.** Petitioner and all subsequent owners shall notify and disclose to all prospective developers, purchasers, and/or lessees within the Project, as part of any conveyance document (deed, leases, etc.) required for the sale or transfer of real property or any interest in real property, of the potential adverse impacts of aircraft activity at and from Kahului Airport such as noise, right of flight, emissions, vibrations, and other incidences of aircraft operations.

3. **Hazardous Wildlife Attractants on or Near Kahului Airport.** As deemed necessary by the DOT to minimize the hazards to aircraft operations from Kahului Airport, Petitioner shall fund and implement a program to control any birds nesting or occupation and any insect, pest, or wildlife infestation, in any hazardous wildlife attractants (open swales, storm drains, retention and detention basins, wastewater treatment facilities, or associated settling ponds) serving the Project. Petitioner shall enter into a Memorandum of Agreement with the DOT to document hazardous wildlife attractant mitigation prior to the granting of tentative subdivision approval.

4. **Water Conservation.** Petitioner shall implement water conservation measures including the use of endemic, indigenous, and drought-tolerant plants and turf, and incorporate such measures into the Petition Area's site design and landscaping.

5. **Wastewater System and Facilities.** Petitioner shall comply with chapter 11-62, HAR, entitled “Wastewater Systems” and any IWS shall be approved by the DOH.

Petitioner shall construct internal sewer lines in accordance with County of Maui standards and provide stub outs for future sewer connection as may be required by the County.

6. **Stormwater Management and Drainage.** Petitioner shall construct and maintain stormwater and drainage system improvements as designed in compliance with applicable federal, State, and County laws and rules. To the extent feasible, Petitioner shall implement BMPs and incorporate Low Impact Development practices for onsite stormwater capture and reuse into the Petition Area’s site design and landscaping to control water quality and mitigate nonpoint sources of pollution.

7. **Civil Defense.** Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location approved by the SCD and County of Maui Civil Defense Agency.

8. **Archaeological and Historic Preservation.** Petitioner shall comply with mitigation measures recommended by the DLNR, SHPD. Archaeological monitoring shall be conducted during all ground disturbing activities on the Petition Area and a report of monitoring activities shall be submitted to the SHPD upon the completion of the fieldwork.

9. **Previously Unidentified Burials and Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the DLNR, SHPD, Maui Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal

deposits, stone platforms, paving, and walls not previously identified in studies referred to herein, are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the DLNR, SHPD, that mitigation measures have been implemented to its satisfaction.

10. **Infrastructure Deadline.** Petitioner shall complete construction of the proposed backbone infrastructure, which consists of the primary roadways and access points, internal roadways, on- and offsite water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten (10) years from the date of the Decision and Order granting the requested reclassification.

11. **County Access to Waikapu Landfill Site.** Petitioner will provide continued access to the County of Maui Waikapu Landfill site as shown on the conceptual plan, page 2, of Petitioner's Exhibit "53" ("Access Easement"). Acceptable alternatives for County access are: (a) over existing Easement "C"; (b) over the Project's internal roadways in combination with the proposed temporary access over Lot 12-A; or (c) over permanent roads within A&B Properties, Inc.'s future Waiale master-planned community. With the consent of the County, Easement "C" may be released before the development of an alternate, permanent route provided the proposed temporary access easement is in place or Petitioner has provided alternate access to the County over Lot 1-C to the satisfaction of the DEM.

12. **County Conditions Related to Access Easement.** Within the Access Easement area, Petitioner shall ensure that: (a) all turning radii in the Access Easement accommodate large vehicles accessing the landfill; (b) the replacement roadway surface in the Access Easement area is sufficient to handle the weight of the large vehicles that access the landfill; (c) the continuity of flow from Waiko Road to the remainder of the landfill Access

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Easement is preserved; and (d) there is a formal, written easement recorded against the Petition Area to document the Access Easement, the terms of which shall be reviewed and approved by the DEM, Solid Waste Division.

13. **Condition Relating to Light Industrial and Commercial Uses.** The uses in the area shown on the conceptual plan referenced in the Commission's proceedings as Petitioner's Exhibit "55" will be limited to the uses described in Exhibit "55." No residential or apartment uses are planned or will be built within the Petition Area. Uses within the 8.5-acre portion of the Petition Area fronting Kuihelani Highway as also shown on Petitioner's Exhibit "55" are limited to B-1, B-2, and B-3 zoning district uses except that no apartment uses are allowed.

14. **Water Service.** A private water system shall be developed for the Petition Area which shall be approved by the DOH, Safe Water Drinking Division, and the DLNR for well drilling and pump installation requirements. Petitioner shall construct internal water lines in accordance with County of Maui standards and will include a stub out for future connection should County of Maui water service becomes available to the Petition Area. At such time, Petitioner and/or its successors shall apply to the DWS for connection and service.

15. **Solid Waste.** Petitioner shall comply with solid waste disposal as required by the DEM.

16. **Dust Control Measures.** In addition to the Stormwater Management and Drainage Condition recommended by OP, Petitioner shall use BMPs to implement dust control measures during and after the development process in accordance with the DOH guidelines.

17. **Hazardous Materials.** Storage and/or disposal of hazardous materials shall be approved by the DOH prior to their establishment within the Petition Area.

18. **Energy Conservation Measures.** Petitioner, where feasible, shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the proposed development.

19. **Established Access Right Protected.** Pursuant to Article XII, section 7, of the Hawaii State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.

20. **Compliance with Section 205-3.5, HRS, Related to Agricultural Uses on Adjacent Agricultural Land.** For all land in the Petition Area or any portion thereof that is adjacent to land in the State Land Use Agricultural District, Petitioner shall comply with the following:

a. Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the State Land Use Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in section 165-2, HRS; and

b. Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Land Use Agricultural District are protected under chapter 165, HRS, the Hawaii Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may

result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

21. **Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with representations made to the Commission as reflected in this Decision and Order. Failure to so develop the Petition Area may result in reversion of the Petition to its former classification, or change to a more appropriate classification.

22. **Notice of Change of Ownership.** Petitioner shall give notice to the Commission of any intent to sell, lease, assign, place in trust or otherwise voluntarily alter the ownership interests in the Petition Area at any time, prior to completion of development of the Petition Area.

23. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and the DP, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission. The annual report shall be due on or before the anniversary date of the Decision and Order for the reclassification of the Petition Area.

24. **Release of Conditions.** The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors and assigns.

25. **Notice of Imposition of Conditions.** Within seven days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a)

record with the Bureau of Conveyances of the State of Hawaii a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area and (b) file a copy of such recorded statement with the Commission.

26. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to section 15-15-92, HAR.

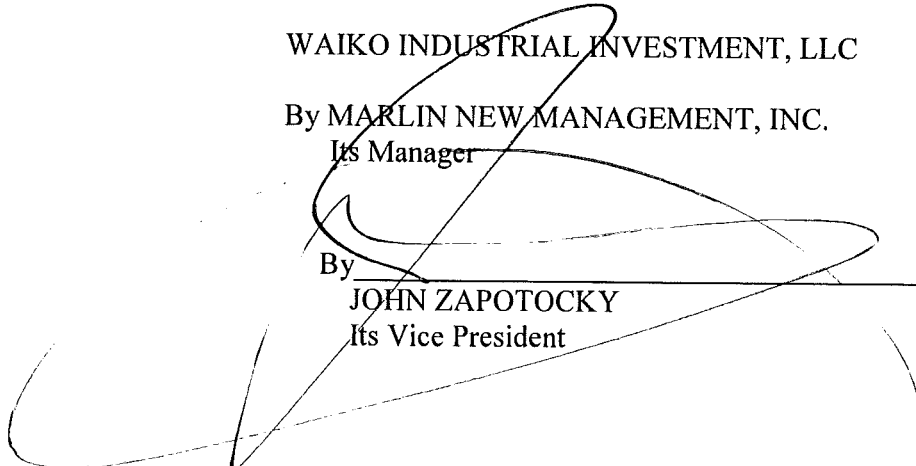
The limitations, restrictions, covenants and conditions of this Declaration shall continue and remain in full force and effect at all times with respect to the Reclassified Area included in this Declaration until such time that the Commission removes or releases the conditions relating to the Reclassified Area established through its Decision and Order filed May 3, 2013, as amended, in Docket No. A12-796.

IN WITNESS WHEREOF, Petitioner has caused this Declaration to be duly executed on the day and year first above written.

WAIKO INDUSTRIAL INVESTMENT, LLC

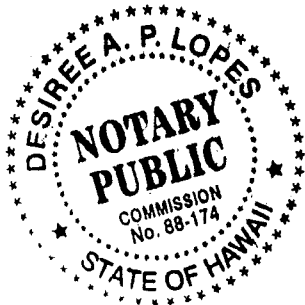
By MARLIN NEW MANAGEMENT, INC.
Its Manager

By _____
JOHN ZAPOTOCKY
Its Vice President



STATE OF ~~WASHINGTON~~ HAWAII)
) ss.
COUNTY OF MAUI)

On this 10th day of July, 2013, before me personally appeared JOHN ZAPOTOCKY, to me personally known, who, being by me duly sworn or affirmed, did say that he is the Vice President of MARLIN NEW MANAGEMENT, INC., a Washington corporation, Manager of WAIKO INDUSTRIAL INVESTMENT, LLC, a Washington limited liability company, and that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

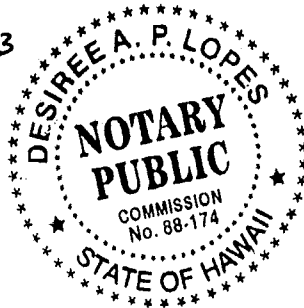


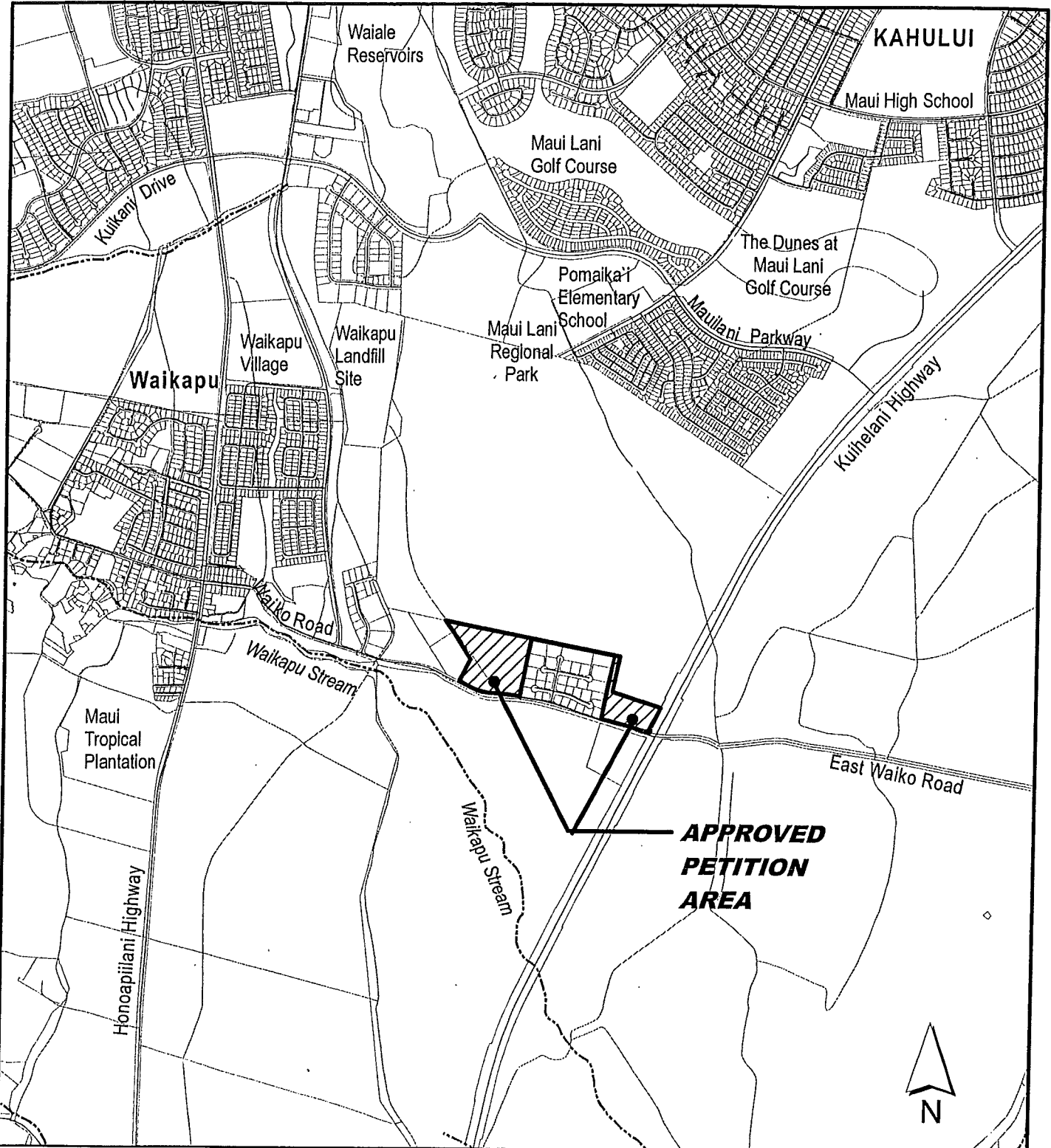
Desiree A. P. Lopes
Name: _____

Notary Public, State of ~~Washington~~ Hawaii

My commission expires: DESIREE A. P. LOPES
My commission expires 3/30/2016

Doc. Date: undated at time of notary # Pages: 12
Doc. Description: Declaration of Conditions
Desiree A. P. Lopes 7.10.13
Notary Signature Date
DESIREE A. P. LOPES
Notary Public, Second Circuit





A12-796 WAIKO INDUSTRIAL INVESTMENT, LLC

LOCATION MAP

Tax Map Key: 3-8-007: 102.
 Waikapu, Wailuku, Maui, Hawai'i
 Scale 1: 24, 000

EXHIBIT "A"

