

A Limited Liability Law Company

August 5, 2008

DD ✓  
~~BS~~  
SM

LAND USE COMMISSION  
STATE OF HAWAII  
2008 AUG -5 P 4: 20

Mitchell A. Imanaka  
Benjamin A. Kudo  
Wesley M. Fujimoto  
Jon M.H. Pang  
Richard T. Asato, Jr.  
Naomi U. Kuwaye

Mr. Orlando "Dan" Davidson  
Executive Officer  
Land Use Commission  
235 South Beretania Street  
Room 406  
Honolulu, Hawaii 96813

**Re: Review and Approval of Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Rural in Docket No. A06-767**

Nikki T. Senter  
Ryan E. Sanada  
Nina L. Takamori  
Owen T. Iida  
Jesse K. Souki

Dear Mr. Davidson:

Pursuant to Hawaii Administrative Rules §15-15-92(b)(1), we attach Petitioner Waikoloa Mauka, LLC's *Declaration of Conditions Applicable to an Amendment of District Boundary from Agricultural to Rural*.

The conditions were imposed by the Land Use Commission in its *Findings of Fact, Conclusions of Law, and Decision and Order* granting a state land use district boundary amendment filed June 10, 2008 in Docket No. A06-767.

Please review the attached as soon as you are able. Petitioner has 60 days within which to record the attached, notarized document with the Bureau of Conveyances, which is **Monday, August 11, 2008** since the 60th day lands on a Saturday.

Of Counsel  
R. Brian Tsujimura  
Perfecto R. Yasay, Jr. \*  
\* admitted to practice only in New York and Philippines, Former Chairman Securities and Exchange Commission, Republic of the Philippines  
Hon. Mario R. Ramil  
Former Associate Justice  
Hawaii Supreme Court

Very truly yours,

IMANAKA KUDO & FUJIMOTO

Benjamin A. Kudo  
Naomi U. Kuwaye  
Jesse K. Souki

BAK/NUK/JKS:kp

Enclosure

TOPA Financial Center  
Fort Street Tower  
745 Fort Street Mall, 17th Floor  
Honolulu, Hawaii 96813  
Phone: (808) 521-9500  
Facsimile: (808) 541-9050  
info@imanakakudo.com

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

as Doc 2008-127524

AUG 11, 2008 11:00 PM

*Nick DeThorne*  
Registrar of Conveyances  
Assistant Registrar, Land Court  
State of Hawaii

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION: RETURN BY MAIL ( ) PICK UP ( X )

Benjamin A. Kudo, Esq.  
Naomi U. Kuwaye, Esq.  
Jesse K. Souki, Esq.  
745 Fort Street, 17<sup>th</sup> Floor  
Honolulu, Hawai'i 96813

Phone: (808) 521-9500

Tax Map Key No. (3) 6-8-02: por. 016

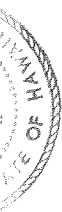
Total Pages 4

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

THIS DECLARATION OF CONDITIONS is made this 8th day of August, 2008,  
by WAIKOLOA MAUKA, LLC, a Delaware limited liability company, whose principal place  
of business is 431 North Brand Boulevard, Suite 201, Glendale, CA 91203 (hereinafter, the  
“Declarant” or “Petitioner”), as required by the State of Hawai‘i Land Use Commission  
(hereinafter, the “Commission”) in its Findings of Fact, Conclusions of Law, and Decision and  
Order granting a state land use district boundary amendment in Docket No. A06-767;

*KCK*

LAND USE COMMISSION  
STATE OF HAWAII  
2008 AUG 11 PM 2:01



W I T N E S S E T H:

WHEREAS, Declarant will develop certain real property situate at South Kohala District, Island of Hawai'i, State of Hawai'i, specifically identified as Tax Map Key Nos. (3) 6-8-02: por. 016, and more particularly described in Exhibit "1", attached hereto and incorporated herein by reference (hereinafter, the "Property" or "Petition Area"); and

WHEREAS, the Commission, by issuing Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment filed June 10, 2008, in Docket No. A06-767 (hereinafter, the "Decision and Order"), amended certain State Land Use district boundaries and reclassified the Property from the State Land Use Agricultural District to the State Land Use Rural District, as reflected in Exhibit "A" attached hereto; and

WHEREAS, the Commission enumerated certain conditions applicable to the Petition Area in the Decision and Order; and

WHEREAS, pursuant to Hawai'i Administrative Rules ("HAR") §15-15-92, the conditions imposed by the Commission in the Decision and Order shall be recorded at the Bureau of Conveyances of the State of Hawai'i;

NOW, THEREFORE, Declarant hereby declares that the Property reclassified from the State Land Use Agricultural District to the State Land Use Rural District, described in Exhibit "1" and reflected in Exhibit "A", shall be subject to the following conditions enumerated in the Decision and Order:

1. **Compliance with Representations to the Commission.** Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.

KCK

2. **Completion of Project.** Petitioner shall develop the Petition Area and complete buildout of the Project no later than ten (10) years from the date of the Commission's decision and order. For purposes of the Commission's decision and order, "buildout" means completion of the backbone infrastructure to allow for the sale of individual lots.

3. **Reversion on Failure to Complete Project.** If Petitioner fails to complete buildout of the Project or secure a bond for the completion thereof within ten (10) years from the date of the Commission's decision and order, the Commission may, on its own motion or at the request of any party or interested person, file an Order to Show Cause and require Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.

4. **Water Resource Allocation.** Petitioner shall provide drinking and irrigation water source, storage, and transmission facilities and improvements to accommodate development of the Petition Area, to the satisfaction of the County of Hawai'i ("County") and appropriate State agencies. Petitioner shall notify the Commission of changes to its proposed water source for the Project's drinking water and irrigation water needs.

5. **Water Conservation Measures.** Petitioner shall implement water conservation measures as may be required by the applicable provisions of the Hawai'i County Code, and shall implement BMPs, such as use of indigenous and drought tolerant plants and turf and incorporate such measures in the Project's landscape planting. Petitioner shall require the use of native drought tolerant plants on the Petition Area in the Conditions, Covenants and Restrictions ("CC&Rs") associated with the Project or in deed restrictions for each lot in the Project. Petitioner shall provide a copy of the complete CC&Rs to the Commission within 30 days after the CC&Rs become enforceable.

KCK

6. **Transportation.** Petitioner shall reach an agreement with the State DOT for the construction of the following improvements related to the Project:

a. For the intersection, Waikoloa Road and Queen Ka'ahumanu Highway, the State DOT has requested that the Petitioner include improvements to make the makai bound approach from Waikoloa Road have one left-turn only lane, one through/left-turn lane, and a right turn lane with the appropriate signalization. In addition, an acceleration lane would be added to Queen Ka'ahumanu Highway to accommodate the additional left-turn lane;

b. Petitioner will provide a left-turn shelter lane on Mamalahoa Highway from Waikoloa Road, and two advanced warning lights, one located on mauka-bound Waikoloa Road, and the other on southbound Mamalahoa Highway. Prior to final subdivision approval, Petitioner will enter into a Memorandum of Understanding with the State DOT outlining the proposed improvements. Petitioner will provide the Commission with a copy of the fully executed agreement within 30 days from the date the agreement is fully executed. Petitioner will also comply with Condition C of Ordinance No. 07-127, as may be amended from time to time, which fulfills the Petitioner's transportation obligations to the County in relation to the Project.

7. **Street Lights.** Petitioner shall use shielded or low sodium streetlights within the Project to avoid impacts to flight birds and other population.

8. **Plant Species.** Petitioner shall preserve native wiliwili trees and kāwelu grassland assemblages located outside of the construction and grading areas, if practicable, consistent with the development of the Project.

KCK

9. **Affordable Housing.** Petitioner shall provide affordable housing opportunities for residents in the State of Hawai'i in accordance with applicable affordable housing requirements of the County. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County. Petitioner shall provide the Commission with a fully executed copy of the affordable housing agreement within 30 days of the execution of the agreement.

10. **Previously Unidentified Burial/Archaeological/Historic Sites.** In the event that historic resources, including human skeletal remains, lava tubes and lava blisters/bubbles are identified during the construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division ("SHPD"), Hawai'i 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 the studies referred to herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigative measures have been implemented to its satisfaction.

11. **Archaeological Site 22.** Petitioner shall consult and comply with all SHPD recommendations in regards to the treatment of Site 22.

12. **Drainage.** Petitioner shall prepare a drainage study and the recommended drainage system shall be constructed, meeting with the approval of the County of Hawai'i Department of Public Works.

KCK

13. **Wastewater.** Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the County of Hawai'i Department of Environmental Management and the State Department of Health

14. **Solid Waste.** Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS Chapter 342G. The solid waste management plan shall be approved by the County of Hawai'i Department of Environmental Management and the Department of Health ("DOH").

15. **Civil Defense.** Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawai'i, Department of Defense, Office of Civil Defense, and the County of Hawai'i, Civil Defense Agency.

16. **Established Access Rights Protected.** Petitioner shall preserve any established access rights of native Hawaiians to undeveloped lands, who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices or for access to other areas.

17. **Air Quality Monitoring.** Petitioner shall participate in an air quality monitoring program if required by the DOH.

18. **Best Management Practices.** Petitioner shall implement applicable Best Management Practices ("BMPs") applicable to each proposed land use in order to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with the State Department of Health guidelines.

KCK

19. **Energy Conservation Measures.** Petitioner shall implement energy conservation and sustainable design measures, that are feasible and practicable, such as use of solar energy and solar heating and the standards and guidelines promulgated by the Building Industry Association of Hawai'i, the U.S. Green Building Council, the Hawai'i Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawai'i, and the applicable county building codes, as amended, into the design and construction of the Project and the structures within the Petition Area.

20. **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, prior to development of the Petition Area.

21. **Annual Reports.** Petitioner shall timely provide without any prior notice, annual reports to the Commission, Office of Planning, and County in connection with 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.

22. **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.

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

KCK




24. **Recordation of Conditions.** Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR §15-15-92. Such conditions shall run with the land, pursuant to HRS §205-4(g).

A copy of the recorded conditions shall be submitted to the Commission pursuant to section HAR §15-15-92. The foregoing conditions shall run with the land and shall be binding upon the Petitioner and each and every subsequent owner, lessee, sub-lessee, transferee, grantee, assignee, or developer, pursuant to HAR §15-15-91.

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 Property until such time that the Commission removes or releases the conditions enumerated in the Decision and Order.

DATED: Honolulu, Hawai'i, August 8<sup>th</sup>, 2008.

WAIKOLOA MAUKA, LLC  
a Delaware limited liability company

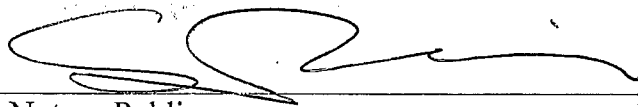
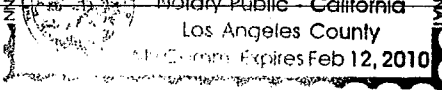
By   
KEVIN C. FELLOW  
Its MANAGER

STATE OF CALIFORNIA	)	
	)	SS
COUNTY OF LOS ANGELES	)	

On August 8, 2008, before me, Stephanie M. Phillips, a Notary Public, personally appeared Kevin C. Kellow, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

	
Notary Public	

My commission expires: Feb 12, 2010



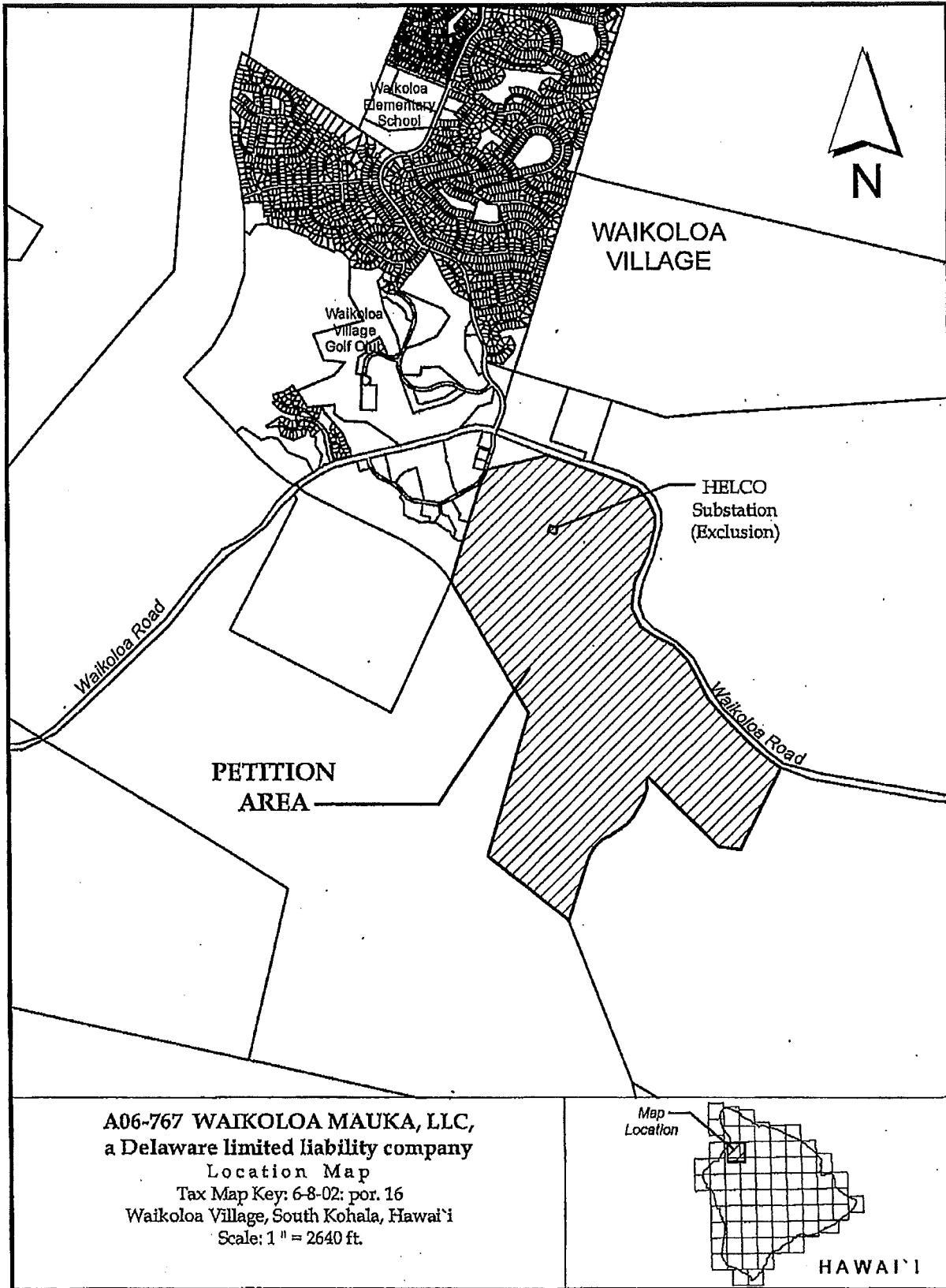


Exhibit "A"

KCK

**PARCEL A**  
**AGRICULTURAL TO RURAL**

BEING A PORTION OF LOT 2-B,  
SAME BEING ALSO A PORTION OF ROYAL PATENT 5671,  
LAND COMMISSION AWARD 8521-B, APANA 1 TO G.D. HUEU

AT WAIKOLOA, SOUTH KOHALA, ISLAND OF HAWAII, HAWAII

Beginning at the southeast corner of this parcel of land, being also along the west side of Waikoloa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI", being 1,933.36 feet North and 2,611.01 feet East and thence running by azimuths measured clockwise from true South:

- |    |  |          |                |
|----|--|----------|----------------|
| 1. | 27° 56'  | 1,777.88 | feet;          |
| 2. | 98° 52' 20"  | 408.28   | feet;          |
| 3. | 135° 05' 56"   | 2,023.07 | feet;          |
| 4. | 87° 40'  | 27.80    | feet;          |
| 5. | 3° 20'   | 24.45    | feet;          |
| 6. | Thence on a curve to the right with a radius of 1,200.00 feet, the chord azimuth and distance being: |          |                |
|    |  | 30° 35'  | 1,098.90 feet; |
| 7. | 57° 50'  | 440.00   | feet;          |
| 8. | Thence on a curve to the left with a radius of 720.00 feet, the chord azimuth and distance being:    |          |                |
|    |  | 38° 46'  | 470.40 feet;   |

- 1 -

420 Waiakamilo Road  
Suite 411  
Honolulu Hawaii 96817-4941  
Telephone 808 842 1133  
Fax 808 842 1937  
eMail rmtowill@i-one.com



**R. M. TOWILL CORPORATION**  
SINCE 1930

Planning  
Engineering  
Environmental Services  
Photogrammetry  
Surveying  
Construction Management

Exhibit "1"

KCK

- |     |  |                |   |
|-----|--|----------------|---|
| 9.  | 19° 42'  | 1,301.88       | feet;   |
| 10. | 160° 02' 36"   | 95.45          | feet along Lot 3-A, being a portion of R.P. 5671, L.C.Aw. 8521-B, Ap. 1 to G.D. Hueu; |
| 11. | 124° 52' 31"   | 2,011.22       | feet along Lot 3-A, being a portion of R.P. 5671, L.C.Aw. 8521-B, Ap. 1 to G.D. Hueu; |
| 12. | 196° 43' 02"   | 3,059.30       | feet along Lot 3-A, being a portion of R.P. 5671, L.C.Aw. 8521-B, Ap. 1 to G.D. Hueu; |
| 13. | 150° 55' 16"   | 3,143.20       | feet along Lot 3-A, being a portion of R.P. 5671, L.C.Aw. 8521-B, Ap. 1 to G.D. Hueu; |
| 14. | 198° 03' 09"   | 2,055.15       | feet along Lot 5, 2 and 1 of Waikoloa RM-1.5 Unit 1 (File Plan 1378);                 |
| 15. | Thence along the south side of Puu Melia, on a curve to the left with a radius of 630.00 feet, the chord azimuth and distance being:     |                |   |
|     |  | 210° 39' 27.5" | 274.97 feet;  |
| 16. | 259° 46'   | 1,406.63       | feet;   |
| 17. | 291° 44' 07"   | 1,561.80       | feet along the west side of Waikoloa Road;  |
| 18. | Thence along the west side of Waikoloa Road, on a curve to the right with a radius of 910.00 feet, the chord azimuth and distance being: |                |   |
|     |  | 336° 31' 44.5" | 1,282.29 feet;  |
| 19. | 21° 19' 22"  | 982.30         | feet along the west side of Waikoloa Road;  |

-2-

420 Waiakamilo Road  
 Suite 411  
 Honolulu Hawaii 96817-4941  
 Telephone 808 842 1133  
 Fax 808 842 1937  
 eMail rmtowill@i-one.com



R. M. TOWILL CORPORATION  
 SINCE 1930

Planning  
 Engineering  
 Environmental Services  
 Photogrammetry  
 Surveying  
 Construction Management

KCK

20. Thence along the west side of Waikoloa Road, on a curve to the left with a radius of 840.00 feet, the chord azimuth and distance being:

338° 36' 23" 1,139.66 feet;

21. 295° 53' 24" 250.22 feet along the west side of Waikoloa Road;

22. Thence along the west side of Waikoloa Road, on a curve to the right with a radius of 910.00 feet, the chord azimuth and distance being:

316° 58' 38.5" 654.82 feet;

23. 338° 03' 53" 399.34 feet along the west side of Waikoloa Road;

24. Thence along the west side of Waikoloa Road, on a curve to the left with a radius of 2,090.00 feet the chord azimuth and distance being:

326° 34' 54.5" 832.14 feet;

25. 315° 05' 56" 1,029.38 feet along the west side of Waikoloa Road;

26. Thence along the west side of Waikoloa Road, on a curve to the left with a radius of 2,090.00 feet the chord azimuth and distance being:

306° 30' 58" 623.82 feet

to the point of beginning and containing a gross area of 732.270 Acres, less Exclusion area of 0.689 Acre and having a net area of 731.581 Acres.





73-5574 Maiiau Street, Suite 11  
Kailua-Kona, Hawaii 96740  
June 26, 2006

Description Prepared by:

R. M. TOWILL CORPORATION

Ryan M. Suzuki 4/30/08  
Ryan M. Suzuki Expiration Date  
Licensed Professional Land Surveyor  
Certificate Number 10059

OF CONVEY

- 4 -

420 Waiakamilo Road  
Suite 411  
Honolulu Hawaii 96817-4941  
Telephone 808 842 1133  
Fax 808 842 1937  
eMail rmtowill@i-one.com



R. M. TOWILL CORPORATION  
SINCE 1930

Planning  
Engineering  
Environmental Services  
Photogrammetry  
Surveying  
Construction Management

KCK