

CARLSMITH BALL LLP

STEVEN S.C. LIM 2505  
DEREK B. SIMON 10612  
ASB Tower, Suite 2100  
1001 Bishop Street  
Honolulu, HI 96813  
Tel No. 808.523.2500  
Fax No. 808.523.0842

LAND USE COMMISSION  
STATE OF HAWAII

2018 JUL 24 P 2:08

Attorneys for Petitioner  
WAIKOLOA HIGHLANDS, INC.

**BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII**

In the Matter of the Petition Of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use District  
Boundary Into the Rural Land Use District for  
Approximately 731.581 Acres in South Kohala  
District, Island of Hawaii, Tax Map Key No.  
(3) 6-8-02:016 (por.)

DOCKET NO. A06-767

WAIKOLOA HIGHLANDS, INC.'S  
MOTION TO CONTINUE HEARING ON  
ORDER TO SHOW CAUSE;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF DEREK  
B. SIMON; DECLARATION OF  
NATALIA BATICHTCHEVA; EXHIBITS  
"A" - "M"; CERTIFICATE OF SERVICE

**MOTION TO CONTINUE HEARING ON ORDER TO SHOW CAUSE**

**I. RELIEF SOUGHT**


WAIKOLOA HIGHLANDS, INC. ("**WHI**"), as successor-in-interest to Waikoloa Mauka, LLC, hereby respectfully requests that the STATE OF HAWAII LAND USE COMMISSION ("**Commission**") issue an order modifying the Commission's Order to Show Cause, filed on July 3, 2018 ("**OSC**"), to allow for the continuance of the hearing on the OSC presently scheduled for August 22-23, 2018, for not less than sixty (60) days in order to allow WHI sufficient time to prepare for and respond to the OSC and to ensure that the Commission has a fully-developed record before it.

**II. GROUNDS FOR MOTION**

This Motion is made pursuant to Chapter 205, Hawai'i Revised Statutes ("**HRS**") and Title 15, Subtitle 3, Chapter 15 of the Hawai'i Administrative Rules ("**HAR**") §§ 15-15-42, 15-15-70 and 15-15-94, the other authorities and arguments stated in the attached Memorandum in Support of Motion, and the pleadings and files herein.

WHI hereby requests a hearing on this Motion pursuant to HAR § 15-15-70(c). WHI respectfully asks the Commission to hear this Motion at its next regular meeting, tentatively scheduled for August 8-9, 2018.

DATED: Honolulu, Hawai'i July 24, 2018.



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STEVEN S.C. LIM  
DEREK B. SIMON

Attorneys for  
WAIKOLOA HIGHLANDS, INC.

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MEMORANDUM IN SUPPORT OF  
MOTION

MEMORANDUM IN SUPPORT OF MOTION

**I. INTRODUCTION**

The Land Use Commission of the State of Hawai'i ("**Commission**") reclassified approximately 731.581-acres of land in the South Kohala District of the County of Hawai'i, Island of Hawai'i ("**Petition Area**") from the State Land Use ("**SLU**") Agricultural District to the SLU Rural District by Findings of Fact, Conclusions of Law, and Decision and Order in Docket No. A06-767, filed on June 10, 2008 ("**D&O**"). The petitioner at the time of the reclassification was Waikoloa Mauka, LLC ("**WML**"), who sought the reclassification to allow for development of a 398-lot residential development (the "**Project**"). Waikoloa Highlands, Inc. ("**WHI**") took title<sup>1</sup> to the Petition Area in 2014.<sup>2</sup> See **Exhibits A** (WHI Articles of Incorporation) & **B** (Quitclaim, Release and Assumption Agreement dated October 15, 2014).

On July 3, 2018, the Commission filed an Order to Show Cause ("**OSC**") in this Docket. See **Exhibit C**, attached hereto. According to the OSC, the Commission determined that there is reason to believe that WML and/or WHI has failed to perform according to the conditions

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<sup>1</sup> Petitioner provided notice of this transfer in ownership of the Petition Area to the Commission by way of letter dated June 8, 2018.

<sup>2</sup> Pending the outcome of the Commission's Order to Show Cause, filed July 3, 2018, WHI will return to the Commission to request formal recognition as the petitioner in Docket No. A06-767 and request leave to amend the caption to reflect the same.

imposed under the D&O and the commitments WML made to the Commission in obtaining the reclassification of the Petition Area. *See id.* at 2. The Commission scheduled a hearing on the OSC for August 22-23, 2018 (the "**OSC Hearing**"). On July 20, 2018, just a little more than two weeks after the Commission filed the OSC, Commission Executive Director Daniel Orodener denied WHI's verbal request for an administrative continuance of the OSC Hearing. Simon Decl. ¶¶ 2-4. Counsel for WHI informed Mr. Ordenker that WHI would be filing this Motion. *Id.* ¶ 4.

WHI received informal feedback from the Commission's staff that the hearing on this Motion would be scheduled immediately prior to the OSC Hearing on August 22, 2018. *Id.* ¶ 5. WHI strongly objects to scheduling this Motion for hearing on the same date as the OSC Hearing, as that will effectively deny the Commission its opportunity to consider this request for continuance.

As discussed below, WHI and its recently retained counsel have been working diligently to prepare for the OSC Hearing. However, given the: (1) significant economic and business interests of WHI that could be adversely affected by the Commission's decision on the OSC; (2) relatively short timeframe to prepare for the hearing; (3) alleged gross mismanagement of WML, WHI, and the development of the Project by the former director of WML and WHI; (4) geographic and logistical challenges to obtaining information and documents located outside of the United States; and (5) need for new consultants to prepare for the OSC Hearing, WHI respectfully requests that the Commission continue the OSC Hearing for no less than sixty (60) days. The requested continuance will ensure that the OSC Hearing provides WHI a meaningful opportunity to be heard, and will also ensure that the Commission has a full record before it prior to any decision making on the OSC.

## II. DISCUSSION

### A. GOOD CAUSE EXISTS TO GRANT THE REQUESTED CONTINUANCE OF THE OSC HEARING

Hawai'i Administrative Rules ("**HAR**") § 15-15-94(a) provides that "[i]f a petitioner . . . desires to have a . . . modification of the commission's order, the petitioner shall file a motion in accordance with section 15-15-70." HAR § 15-15-94(b) provides that the Commission may grant such a motion to modify the Commission's order upon a showing of good cause. HAR § 15-15-42(a) also allows the Commission to grant an extension of time "for good cause shown[.]"

"The term 'good cause' has been defined to mean 'a substantial reason amounting in law to a legal excuse . . .'" *Miller v. Tanaka*, 80 Hawai'i 358, 363, 910 P.2d 129, 134 (Ct. App. 1995) (citation omitted). "'Good cause' also 'depends upon [the] circumstances of [the] individual case, and [a] finding of its existence lies largely in [the] discretion of [the] officer or court to which [the] decision is committed.'" *Id.* at 363-64, 910 P.2d at 134-35 (citation omitted). "As a general rule, 'good cause' means a substantial reason; one that affords a legal excuse." *State v. Estencion*, 63 Haw. 264, 267, 625 P.2d 1040, 1042 (1981) (citations omitted). For the following reasons, some of which will be explained in greater detail at the OSC Hearing, good cause exists to grant the requested continuance.

First, as this Commission may be aware, WML, and subsequently WHI, were allegedly grossly mismanaged by their former director, Stefan Martirosian. Mr. Martirosian's actions have led to certain pending legal actions against him. See **Exhibit D** (Summary of pending legal actions & Complaint for Damages, Vitoil Corporation v. Stepan Martirosian, et al. (Case No. BC714014)). For years, Mr. Martirosian has not been interested in any development of the Project, he offered to sell the land for a very low price in order to seize it and develop it by himself. He did not provide any information on the status of business, terms and conditions, as

well as regarding whether or not these terms and conditions have been fulfilled. Batichtcheva Decl. ¶ 4. Mr. Martirosian dealt only with his own projects and used WHI land to finance them. For example, he mortgaged the Petition Area lands to Aclaime Debt Partners, LLC for \$1.1 million USD, without having informed WHI, and used it for his own purposes. *Id.* ¶ 3. In addition, Mr. Martirosian also keeps extremely poor records and almost never reported information up or down the chain of command at WHL or WHI. Batichtcheva Decl. ¶ 4. This has made obtaining critical details about the Project's development more onerous than would otherwise be expected, and often requires obtaining such information from past consultants and contractors, who themselves must also spend considerable time and effort to locate the pertinent documents and information. *See id.* ¶ 5-6; Simon Decl. ¶ 6.

Second, preparations for the OSC Hearing have been impacted by the fact that the principal representatives of WHI and some of its records reside outside of the United States. Batichtcheva Decl. ¶ 5-6, 9. Some documentation is also maintained in Russian, and thus requires translation to English, causing further delay. *Id.* ¶ 5-6. This transforms simple tasks such as hunting down documents or scheduling conference calls into daily logistical exercises. Simon Decl. ¶ 6. WHI's current counsel was retained just over one month ago and has been working diligently to obtain all relevant documentation related to the Project from WHI and its past consultants, but has been unsuccessful in locating all documents at the time of the filing of this Motion. *Id.*

Third, WHI has retained the services of Hawai'i-based project manager Joel LaPinta. Batichtcheva Decl. ¶ 8. Mr. LaPinta has nearly thirty-years of experience bringing developments of various sizes to the market. *See Exhibit E* (J.LaPinta CV). To assist WHI in responding to the OSC, Mr. LaPinta will be advising WHI as to the market conditions surrounding

development of the Project and development options. WHI believes that the information being provided by Mr. LaPinta will be critical in demonstrating to the Commission that good cause exists to maintain the Petition Area's current SLU Rural District classification. While Mr. LaPinta has been working diligently to prepare his analysis, he was retained by WHI after the OSC was filed, and requires additional time to sufficiently get up to speed on the Project and review the considerable record in this Docket.

Finally, as will be explained in more detail at the OSC Hearing, WHI has taken substantial steps toward commencing development of the Project. On July 30, 2009, WML received Final Subdivision Approval No. SUB-09-000887 for the Wailani Bulk Lots. *See **Exhibit F*** (Final Subdivision Approval SUB-09-000887 & Map).

In satisfaction of the Condition No. 9 of the D&O, on December 1, 2016, WHI and the County of Hawai'i entered into that certain Affordable Housing Agreement Waikoloa Highlands ("**Agreement**"). *See **Exhibit G***. Through this Agreement, WHI agreed to subdivide and convey to Plumeria at Waikoloa LLC, a Hawai'i non-profit corporation, approximately 11.8 acres of land identified in the Agreement as the Affordable Housing Site, within 180 days of the Agreement. *See id.* at 2-3.

On March 28, 2017, WHI submitted to the County of Hawai'i Planning Department its Subdivision Application for 11.707 acres of land for the Affordable Housing Site. *See **Exhibit H*** (Subdivision Application Part 1). On June 1, 2017, by Warranty Deed, WHI conveyed said land to Plumeria at Waikoloa, LLC. *See **Exhibit I***.<sup>3</sup> Said Warranty Deed was recorded in the Bureau of Conveyances of the State of Hawai'i ("**Bureau**") on January 29, 2018, as Regular System Document No. A-66030880. Thus, the Petitioner has attained full completion of its affordable

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<sup>3</sup> Although the Warranty Deed was not recorded until January 29, 2018, the actual conveyance, as required by the Agreement, was completed relatively within the time contemplated by the Agreement.

housing requirements for the proposed Project, as evidenced by the Affordable Housing Release Agreement dated July 20, 2017, by and between the County of Hawai‘i and WHI.

WHI has also: prepared on-site infrastructure construction plans, including traffic improvements; issued to the U.S. Army Corps of Engineers a right-of-access to the Petition Area for the purpose of conducting remedial investigation and removal of residual munitions; and executed a Joint Venture Agreement dated April 29, 2010 and recorded in the Bureau as Regular System Document No. 2010-062607, by and between WML and Hawaiian Riverbend, LLC for the purposes of donating a 10-acre park to the County of Hawai‘i, and providing emergency access roads and utilities to and from the park. See **Exhibit J** (Joint Venture Agreement); see also **Exhibit K** (2016 Annual Report). And on May 15, 2017, WHI received Final Subdivision Approval No. SUB-17-001716 of Lot 2-B-2. See **Exhibit L**.

WHI has certainly taken steps towards substantial commencement of the Project. The additional time to prepare for the OSC Hearing requested in this Motion will be used to gather the evidence necessary to for WHI to show this to the Commission.

B. WHI MUST BE AFFORDABLE REASONABLE NOTICE SO THAT IT CAN MEANINGFULLY PREPARE TO RESPOND TO THE OSC

The outcome of the OSC Hearing could significantly and adversely affect WHI's business, economic, and property interests. Accordingly, WHI must be afforded sufficient time to prepare for and respond to the OSC. See *Mauna Kea Anaina Hou v. Bd. of Land & Natural Res.*, 136 Hawai‘i 376, 391, 363 P.3d 224, 239 (2015) ("Once a contested case hearing is mandated, *due process requires that the parties be given a meaningful opportunity to be heard.*") (emphasis added) (citing *Application of Hawai‘i Elec. Light Co.*, 67 Haw. 425, 430, 690 P.2d 274, 278 (1984)).

The Hawai‘i Supreme Court recently observed that



A contested case hearing is similar in many respects to a trial before a judge: the parties have the right to present evidence, testimony is taken under oath, and witnesses are subject to cross-examination. ***It provides a high level of procedural fairness and protections to ensure that decisions are made based on a factual record that is developed through a rigorous adversarial process.***

*Mauna Kea Anaina Hou*, 136 Hawai'i at 380, 363 P.3d at 228 (2015) (emphases added). HRS § 91-9(a) also requires that "in any contested case, all parties shall be afforded an opportunity for hearing ***after reasonable notice.***" (Emphasis added.) The mandates of HRS § 91-9 are satisfied where "***all parties ha[ve] been given ample opportunity to obtain and present all their evidence,*** to present testimony, both written and oral, to cross examine witnesses, and to argue the issues on the merits[.]" *Lanaians for Sensible Growth v. Lanai Resorts, LLC*, 137 Hawai'i 298, 369 P.3d 881 (Ct. App. 2016), as corrected (Mar. 24, 2016) (emphases added) (citing *Application of Kauai Elec. Div. of Citizens Utils. Co.*, 60 Haw. 166, 182, 590 P.2d 524, 536 (1978)).

The Commission held a status conference on this Docket on June 23, 2018. After a representative of WHI and/or WML failed to make an appearance, the Commission voted to issue the OSC. The Commission did not file the OSC until July 3, 2018, which was the first time WHI was notified that the OSC Hearing would be held on August 22-23, 2018. Accordingly, WHI has been given less than two months to prepare for the OSC Hearing.

Under some circumstances, less than two months' notice may provide a sufficient opportunity to prepare for and respond to an Order to Show Cause. For example, at a status conference held on May 9, 2018 for Docket No. A05-755, Hale Mua Properties, Inc., the Commission voted to issue an Order to Show Cause. The Commission subsequently issued the Order on June 4, 2018, which set the hearing thereon for July 25, 2018, thereby providing

roughly the same amount of time WMI has been granted to prepare.<sup>4</sup> There is, however, a critical distinction between the Docket No. A05-755 and the present Docket: the successor petitioner to Hale Mua Properties, Inc. is not opposing and, in fact, is *supporting* the Commission's potential reversion. *See generally* **Exhibit M** (Successor Petitioner Southwest 7, LLC's Position Statement on Order to Show Cause, filed July 18, 2018), attached hereto.

Under these circumstances, however, less than two months' notice is simply not reasonable, particularly given WHI's substantial interests at stake and the palpable risk of WHI being prejudiced without the requested continuance. As compared to the successor petitioner to Hale Mua Properties, Inc., WHI is already in the process of gathering evidence demonstrating that it has substantially commenced its use of the Petition Area. WHI simply asks that it be granted adequate time do so.


### **III. CONCLUSION**

For the foregoing reasons, WHI respectfully submits that good cause has been shown and requests that the Commission grant WHI's request for a continuance of the OSC Hearing for not less than sixty (60) days.

Dated: Honolulu, Hawai'i, July 24, 2018

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<sup>4</sup> In fact, given the longer period between the status hearing and the issuance of the Order to Show Cause in Docket No. A05-755, the successor petitioner in the Hale Mua docket was actually provided more time to prepare for the hearing than WHI has presently been provided.



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STEVEN S.C. LIM  
DEREK B. SIMON

Attorneys for  
WAIKOLOA HIGHLANDS, INC.

BEFORE THE LAND USE COMMISSION  
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In the Matter of the Petition Of

WAIKOLOA MAUKA, LLC

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(3) 6-8-02:016 (por.)

DOCKET NO. A06-767

DECLARATION OF DEREK B. SIMON

DECLARATION OF DEREK B. SIMON

I, DEREK B. SIMON, declare and state as follows:

1. I am an attorney with Carlsmith Ball LLP, attorneys for Waikoloa Highlands, Inc., successor-in-interest to Waikoloa Mauka, LLC, the original Petitioner in Docket No. A06-767.

2. On July 20, 2018, I made a verbal request by way of telephone to Executive Director Daniel E. Orodenker for an administrative continuance to the hearing on the Order to Show Cause ("**OSC**") issued by the Land Use Commission of the State of Hawai'i ("**Commission**") on July 3, 2018, which is presently scheduled to be heard by the Commission on August 22-23, 2018 (the "**OSC Hearing**").

3. During my conversation with Executive Director Orodenker, I explained the circumstances underlying the present Motion, and explained why Waikoloa Highlands, Inc. ("**WHI**") believes that a continuance of the OSC Hearing is necessary for WHI to have a fair and meaningful opportunity to respond to the OSC, and that the requested continuance would also allow for a more complete record to be before the Commission at the OSC Hearing.

4. Executive Director Orodener stated that he was unwilling to administratively reschedule the OSC Hearing to a later date. At that time, I informed Executive Director Orodener that WHI would likely be proceeding with the present Motion.

5. On July 23, 2018, we received informal feedback from the Commission's staff that the hearing on this Motion will be scheduled immediately prior to the Commission's meeting on August 22, 2018.

6. Carlsmith Ball LLP was retained as counsel for WHI in June of 2018, just over one month ago. Counsel has been working diligently to obtain all relevant documentation related to the Project from WHI and its past consultants, but has been unsuccessful in locating all documents at the time of the filing of this Motion.

7. Attached hereto as **Exhibit A** is a true and correct copy of the Articles of Incorporation for WHI, dated October 1, 2014, filed with the Colorado Secretary of State, obtained from the files of Mr. Sidney Fuke.

8. Attached hereto as **Exhibit B** is a true and correct copy of the Quitclaim, Release and Assumption Agreement dated October 15, 2014, whereby WML transferred to and WHI obtained all rights, title and interest in and to the Petition Area, obtained from the files of Mr. Sidney Fuke.

9. Attached hereto as **Exhibit C** is a true copy of the Order to Show Cause ("OSC") filed July 3, 2018, in this Docket by the Commission, obtained from the Commission's website, obtained on July 23, 2018, <https://luc.hawaii.gov/completed-dockets/decision-and-orders-for-boundary-amendments/completed-dba-hawaii-county/completed-dba-hawaii-county-2000s/completed-dba-hawaii-county-2006-to-2009/a06-767-waikoloa-mauka-llc/>.

10. Attached hereto as **Exhibit D** is a true copy of the summary of pending legal actions, prepared by Arch Ltd. and the Complaint for Damages, Vitoil Corporation v. Stepan Martirosian, et al. (Case No. BC714014), provided to Carlsmith by WHI.

11. Attached hereto as **Exhibit E** is a true copy of the curriculum vitae of Mr. Joel La Pinta, provided to Carlsmith Ball by Mr. LaPinta on July 24, 2018.

12. Attached hereto as **Exhibit F** is a true and correct copy of the Final Subdivision Approval No. SUB-09-000887 dated July 30, 2009 and the Final Subdivision Approval Map SUB-09-000887, obtained from the Planning Department, County of Hawai'i.

13. Attached hereto as **Exhibit G** is a true and correct copy of the Affordable Housing Agreement Waikoloa Highlands dated December 1, 2016, by and between WHI and the County of Hawai'i, obtained from the files of Mr. Sidney Fuke.

14. Attached here to as **Exhibit H** is a true and correct copy of the Subdivision Application dated March 28, 2017, obtained from the files of Mr. Sidney Fuke.

15. Attached hereto as **Exhibit I** is a true and correct copy of the Warranty Deed dated June 1, 2017 and recorded in the Bureau of Conveyances of the State of Hawai'i on January 29, 2018, recorded as Regular System Document No. A-66030880, obtained from Title Guaranty of Hawaii, LLC.

16. Attached hereto as **Exhibit J** is a true and correct copy of the Joint Venture Agreement dated April 29, 2010 and recorded in the Bureau as Regular System Document No. 2010-062607, by and between WML and Hawaiian Riverbend, LLC, obtained from Title Guaranty of Hawaii, LLC.

17. Attached here to as **Exhibit K** is a true copy of the Annual Report – Docket No. A06-767, Waikoloa Mauka, LLC, TMK: (3) 6-8-002: 016, dated March 2, 2018, obtained from

the Commission's website on July 23, 2018, <https://luc.hawaii.gov/completed-dockets/decision-and-orders-for-boundary-amendments/completed-dba-hawaii-county/completed-dba-hawaii-county-2000s/completed-dba-hawaii-county-2006-to-2009/a06-767-waikoloa-mauka-llc/>.

18. Attached here to as **Exhibit L** is a true copy of the Final Subdivision Approval No. SUB-17-001716 of Lot 2-B-2, dated May 15, 2017, obtained from the files of Mr. Sidney Fuke.

19. Attached here to as **Exhibit M** is a true copy of the Order to Show Cause in Docket No. A05-755, Hale Mua, LLC, TMK: (2) 3-3-002: 001 (portion), dated June 4, 2018, obtained from the Commission's website on July 23, 2018, <https://luc.hawaii.gov/completed-dockets/decision-and-orders-for-boundary-amendments/completed-dba-maui-county/completed-dba-maui-2000s/a05-755-hale-mua-properties-inc/>.

I, DEREK B. SIMON, do declare under the penalties of perjury that the foregoing is true and correct.



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DEREK B. SIMON

Attorney for  
WAIKOLOA HIGHLANDS, INC.

Dated: Honolulu, Hawai'i, July 24, 2018



BEFORE THE LAND USE COMMISSION  
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DOCKET NO. A06-767

DECLARATION OF NATALIA  
BATICHTCHEVA

DECLARATION OF NATALIA BATICHTCHEVA

I, NATALIA BATICHTCHEVA, declare and state as follows:

1. I am the President of Waikoloa Highlands, Inc. ("**WHI**"), successor-in-interest to Waikoloa Mauka, LLC ("**WML**"), the original Petitioner in Docket No. A06-767.
2. When acquired the Petition Area in 2014, I became aware that the Project was mismanaged by the former manager, Mr. Stefan Martirosian.
3. Examples of Mr. Martirosian's mismanagement of the Project are: Mr. Martirosian mortgaged the Hawaiian lands to Aclaime Debt Partners, LLC for \$1.1 million USD, without having informed us, and used it for his own purposes.
4. Mr. Martirosian also kept extremely poor records related to this Project and almost never reported information up or down the chain of command at WHL or WHI. As an example, I recently found about subdivision tasks from one of our contractors.
5. Many of the records related to this Project are maintained in California and Russia.
6. Some records are maintained in Russian, and require translation to English prior to counsel's use.


7. Attached hereto as Exhibit D is a true and correct copy of a summary of the legal actions currently pending against Mr. Martirosian, prepared by Arch, Ltd.

8. On July 10, 2018, WHI retained the services of Mr. Joel LaPinta to assist WHI in development of the Project.

9. I am currently in Russia and am unable to submit the original copy of this Declaration to the Commission by the filing of the Motion for Continuance. Accordingly, this Declaration will be notarized and the original copy filed with the Commission as soon within one (1) week of the filing of the Motion.

I, NATALIA BATICHTCHEVA, do declare under the penalties of perjury that the foregoing is true and correct.

DATED: \_\_\_\_\_, July 24, 2018.

  
\_\_\_\_\_  
NATALIA BATICHTCHEVA  
President  
WAIKOLOA HIGHLANDS, INC.



Colorado Secretary of State  
 Date and Time: 10/01/2014 05:15 PM  
 ID Number: 20141606489  
 Document number: 20141606489  
 Amount Paid: \$1.00

Document must be filed electronically.  
 Paper documents are not accepted.  
 Fees & forms are subject to change.  
 For more information or to print copies  
 of filed documents, visit www.sos.state.co.us.

ABOVE SPACE FOR OFFICE USE ONLY

**Articles of Incorporation for a Profit Corporation**

filed pursuant to § 7-102-101 and § 7-102-102 of the Colorado Revised Statutes (C.R.S.)

1. The domestic entity name for the corporation is

Waikoloa Highlands, Inc.

*(Caution: The use of certain terms or abbreviations are restricted by law. Read instructions for more information.)*

2. The principal office address of the corporation's initial principal office is

Street address 4316 Marina City Drive, Suite G101  
*(Street number and name)*

Marina Del Rey CA 90292  
*(City) (State) (ZIP/Postal Code)*  
United States  
*(Province - if applicable) (Country)*

Mailing address  
 (leave blank if same as street address) \_\_\_\_\_  
*(Street number and name or Post Office Box information)*

\_\_\_\_\_  
*(City) (State) (ZIP/Postal Code)*  
 \_\_\_\_\_  
*(Province - if applicable) (Country)*

3. The registered agent name and registered agent address of the corporation's initial registered agent are

Name  
 (if an individual) \_\_\_\_\_  
*(Last) (First) (Middle) (Suffix)*

or

(if an entity) Corporation Service Company  
*(Caution: Do not provide both an individual and an entity name.)*

Street address 1560 Broadway  
*(Street number and name)*

Suite 2090  
Denver CO 80202  
*(City) (State) (ZIP/Postal Code)*

Mailing address  
 (leave blank if same as street address) \_\_\_\_\_  
*(Street number and name or Post Office Box information)*

\_\_\_\_\_  
*(City) (State) (ZIP/Postal Code)*

(The following statement is adopted by marking the box.)

The person appointed as registered agent above has consented to being so appointed.

4. The true name and mailing address of the incorporator are

Name  
(if an individual) \_\_\_\_\_  
(Last) (First) (Middle) (Suffix)

or

(if an entity) CorpNet.com  
(Caution: Do not provide both an individual and an entity name.)

Mailing address 340 N. Westlake Blvd. Ste. 210  
(Street number and name or Post Office Box information)

Westlake Village CA 91362  
(City) (State) (ZIP/Postal Code)  
United States.  
(Province - if applicable) (Country)

(If the following statement applies, adopt the statement by marking the box and include an attachment.)

The corporation has one or more additional incorporators and the name and mailing address of each additional incorporator are stated in an attachment.

5. The classes of shares and number of shares of each class that the corporation is authorized to issue are as follows.

The corporation is authorized to issue 1,500 common shares that shall have unlimited voting rights and are entitled to receive the net assets of the corporation upon dissolution.

Information regarding shares as required by section 7-106-101, C.R.S., is included in an attachment.

6. (If the following statement applies, adopt the statement by marking the box and include an attachment.)

This document contains additional information as provided by law.

7. (Caution: Leave blank if the document does not have a delayed effective date. Stating a delayed effective date has significant legal consequences. Read instructions before entering a date.)

(If the following statement applies, adopt the statement by entering a date and, if applicable, time using the required format.)

The delayed effective date and, if applicable, time of this document is/are \_\_\_\_\_  
(mm/dd/yyyy hour:minute am/pm)

Notice:

Causing this document to be delivered to the Secretary of State for filing shall constitute the affirmation or acknowledgment of each individual causing such delivery, under penalties of perjury, that the document is the individual's act and deed, or that the individual in good faith believes the document is the act and deed of the person on whose behalf the individual is causing the document to be delivered for filing, taken in conformity with the requirements of part 3 of article 90 of title 7, C.R.S., the constituent documents, and the organic statutes, and that the individual in good faith believes the facts stated in the document are true and the document complies with the requirements of that Part, the constituent documents, and the organic statutes.

This perjury notice applies to each individual who causes this document to be delivered to the Secretary of State, whether or not such individual is named in the document as one who has caused it to be delivered.

8. The true name and mailing address of the individual causing the document to be delivered for filing are

Beren Amanda  
(Last) (First) (Middle) (Suffix)  
340 N. Westlake Blvd. Ste. 210  
(Street number and name or Post Office Box information)  
Westlake Village CA 91362  
(City) (State) (ZIP/Postal Code)  
United States  
(Province - if applicable) (Country)

*(If the following statement applies, adopt the statement by marking the box and include an attachment.)*

- This document contains the true name and mailing address of one or more additional individuals causing the document to be delivered for filing.

**Disclaimer:**

This form/cover sheet, and any related instructions, are not intended to provide legal, business or tax advice, and are furnished without representation or warranty. While this form/cover sheet is believed to satisfy minimum legal requirements as of its revision date, compliance with applicable law, as the same may be amended from time to time, remains the responsibility of the user of this form/cover sheet. Questions should be addressed to the user's legal, business or tax advisor(s).

QUITCLAIM, RELEASE AND ASSUMPTION AGREEMENT

This Quitclaim, Release and Assumption Agreement (this "Agreement") dated as of October 15, 2014, is among Waikoloa Mauka, LLC, a Delaware limited liability company ("WM"), and Waikoloa Highlands, Inc., a Colorado corporation ("WH"), with regards to the matters set forth in the following recitals.

RECITALS

WHEREAS, WM is the owner of those certain parcels of property located in the State of Hawaii, and identified in the official records as Parcel 3-6-8-2-16 and Parcel 3-6-8-2-17 (together the "Property"); and

WHEREAS, WM desires to transfer ownership in the Property to WH on the terms and conditions set forth herein;

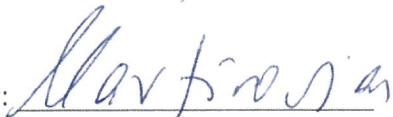
NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

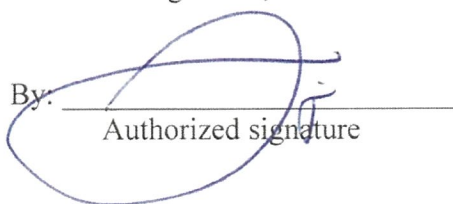
1. Quitclaim: WM hereby quitclaims, transfers, and assigns to WH all of WM's rights, title, and interest in and to the Property. If and to the extent required by a title company in furtherance of the conveyance hereunder, WM agrees to execute any further releases or quitclaim deeds as may be reasonably requested by such title company to evidence the release and quitclaim of the interests of WM as to the Property.
2. Release. WH hereby releases and agrees to hold harmless WM against any and all claims, damages, or losses resulting from the transfer of ownership in the Property.
3. Representations and Warranties. The parties hereby represent and warrant that they have full right and authority to enter into this Agreement, to make the release and quitclaim, to make the representation and warranties and to undertake any obligations as set forth in this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

Waikoloa Mauka, LLC

By:   
Authorized signature

Waikoloa Highlands, Inc.

By:   
Authorized signature



LAND USE COMMISSION  
STATE OF HAWAII

2018 JUL -3 P 3: 21

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the matter of the Petition of  
  
WAIKOLOA MAUKA, LLC  
  
To Amend the Agricultural Land Use  
District Boundaries into the Rural Land  
Use District for Approximately 731.581  
Acres in South Kohala District, Island of  
Hawaii'i, Tax Map Key No. (3) 6-8-02:016  
(portion)

DOCKET NO. A06-767

ORDER TO SHOW CAUSE; EXHIBIT  
"A"; CERTIFICATE OF SERVICE

ORDER TO SHOW CAUSE; EXHIBIT "A";

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct  
copy of the document on file in the office of the  
State Land Use Commission, Honolulu, Hawaii

7/3/18 by

Executive Officer



LAND USE COMMISSION  
STATE OF HAWAII

2010 JUL -3 P 3: 21

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the matter of the Petition of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use  
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AND

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LAND USE COMMISSION  
STATE OF HAWAII

2018 JUL -3 P 3: 21

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the matter of the Petition of  
  
WAIKOLOA MAUKA, LLC  
  
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(portion)

DOCKET NO. A06-767

ORDER TO SHOW CAUSE; EXHIBIT  
"A"; CERTIFICATE OF SERVICE

**ORDER TO SHOW CAUSE**

TO: WAIKOLOA MAUKA, LLC ("Petitioner"),

YOU ARE HEREBY COMMANDED, under the authority of section 205-4, Hawaii'i Revised Statutes ("HRS"), and section 15-15-93, Hawaii'i Administrative Rules ("HAR"), to appear before the Land Use Commission, State of Hawaii'i ("Commission"), at the Natural Energy Laboratory of Hawaii'i (NELHA) – Hale Iako Training Room #119, on August 22-23, 2018, at 9:00 a.m., to show cause as to why that certain land at Waikoloa, South Kohala, County of Hawaii'i, Tax Map Key No. (3) 6-8-02:016 (portion), covering approximately 731.581 acres of land referred to as the Subject Area, and approximately identified on Exhibit "A", attached hereto and incorporated herein, should not revert to its former land use classification or be changed to a more appropriate classification.

The Commission has reason to believe that you have failed to perform according to the conditions imposed and to the representations and commitments made to the Commission in obtaining reclassification of the Subject Area. The conditions of the Decision and Order which may have been violated or not been met include, but may not be limited to the following:

1. Condition 1 Compliance With Representations to the Commission;
2. Condition 2 Completion of Project;
3. Condition 3 Reversion on Failure to Complete Project;
4. Condition 4 Water Resource Allocation;
5. Condition 6 Transportation;
6. Condition 9 Affordable Housing;
7. Condition 11 Archaeological Site 22;
8. Condition 12 Drainage;
9. Condition 13 Wastewater;
10. Condition 14 Solid Waste;
11. Condition 20 Notice of Change in Ownership; and,
12. Condition 21 Annual Reports.

Section 205-4, HRS, authorizes the Commission to impose conditions necessary to “assure substantial compliance with representations made by the petitioner in seeking a boundary change” and that “absent substantial commencement of use of the land in accordance with such representations, the [C]ommission shall issue and serve upon the party bound by the condition an order to show cause why the property should not be revert to its former land use classification or be changed to a more appropriate classification.”

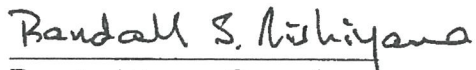
Accordingly, the Commission will conduct a hearing on this matter in accordance with the requirements of Chapter 91, HRS, and subchapters 7 and 9 of chapter 15-15, HAR. All parties in this docket shall present testimony and exhibits to the Commission as to whether Petitioner has failed to perform according to representations made in seeking the land use reclassification.

Any party may retain counsel if the party so desires.

Dated: Honolulu, Hawai'i, this 3rd day of July,

2018, per motion on May 23, 2018.

APPROVED AS TO FORM

  
Deputy Attorney General

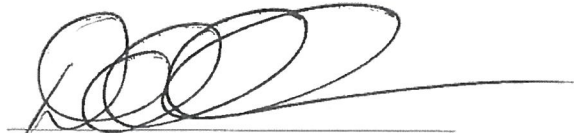
LAND USE COMMISSION  
STATE OF HAWAII

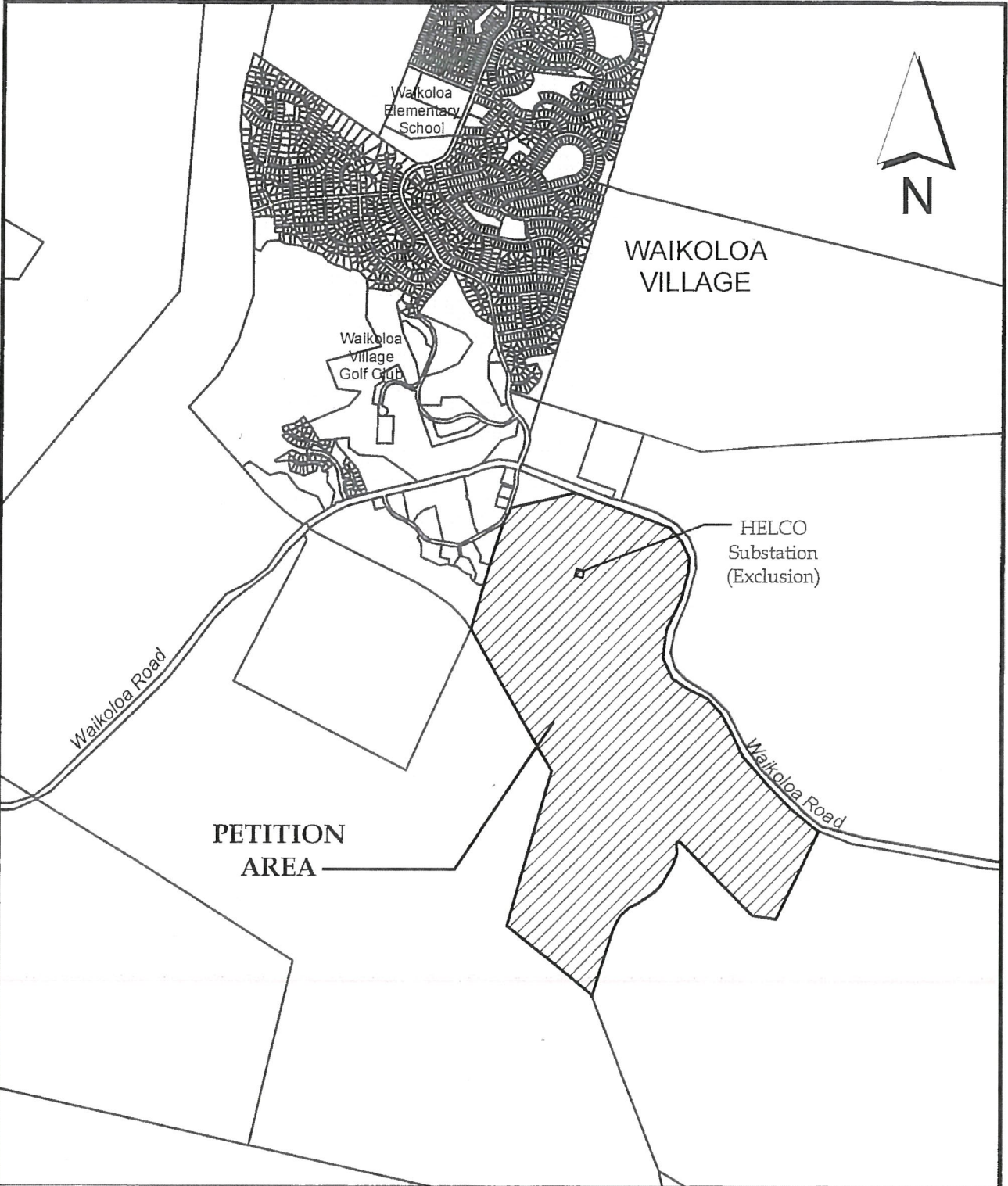
By   
JONATHAN LIKEKE SCHEUER  
Chairperson and Commissioner

Filed and effective on:

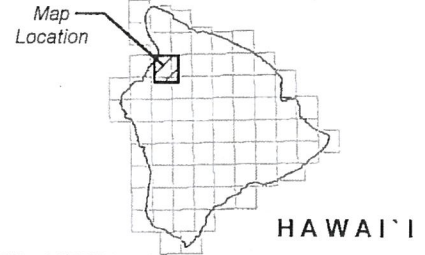
7/3/2018

Certified by:

  
DANIEL E. ORODENKER  
Executive Officer



**A06-767 WAIKOLOA MAUKA, LLC,**  
**a Delaware limited liability company**  
 Location Map  
 Tax Map Key: 6-8-02: por. 16  
 Waikoloa Village, South Kohala, Hawai'i  
 Scale: 1" = 2640 ft.  
**Exhibit "A"**



BEFORE THE LAND USE COMMISSION  
STATE OF HAWAI'I

In the matter of the Petition of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use  
District Boundaries into the Rural Land  
Use District for Approximately 731.581  
Acres in South Kohala District, Island of  
Hawai'i, Tax Map Key No. (3) 6-8-02:016  
(portion)

DOCKET NO. A06-767

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the ORDER TO SHOW CAUSE, was served upon the following by depositing the same in the U. S. Postal Service by registered or certified mail as noted:

- DEL.           LEO ASUNCION, Director  
                  Office of Planning  
                  P. O. Box 2359  
                  Honolulu, Hawai'i 96804-2359
- DEL.           DAWN TAKEUCHI APUNA, Esq.  
                  Deputy Attorney General  
                  425 Queen Street  
                  Honolulu, Hawai'i 96813  
                  Attorney for State Office of Planning
- CERT.          STEVEN S.C. LIM, Esq.  
                  Carlsmith Ball LLP  
                  121 Waiuanue Avenue  
                  P.O. Box 686  
                  Hilo, Hawai'i 96721-0686  
                  Attorney for Petitioner  
                  WAIKOLOA MAUKA, LLC

CERT. MICHAEL LEE, Director  
County of Hawai'i, Planning Department  
Aupuni Center  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720

CERT. JOSEPH K. KAMELAMELA, Esq.  
Department of the Corporation Counsel  
Hilo Lagoon Center  
101 Pauahi Street, Suite 325  
Hilo, Hawai'i 96720  
Attorney for County of Hawai'i  
Department of Planning

CERT. Fee Owner  
Waikoloa Highlands, Inc.  
1200 South Brand Blvd. #202  
Glendale, CA 91204-2641

Email Natalia <natalia@vitoilinc.com>

Dated: Honolulu, Hawai'i, 7/3/18.



DANIEL E. ORODENKER  
Executive Officer

REC'D JUL 09 2018

State of Hawaii  
LAND USE COMMISSION  
PO Box 2359  
Honolulu HI 96804-2359

91 7108 2133 3939 2276 8305



Steven S. C. Lim, Esq.  
Carlsmith Ball LLP  
121 Waiannu Avenue  
Hilo, Hawaii 96720



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## Statement

### In relation of legal steps undertaken against Stefan Martirosian

At the end of 2010, Stefan Martirosian, who had already been by then for 10 years a director of the companies owned by us (by Arch Ltd, Bahamas) and registered in USA, i.e. Vitoil Corp, Waikoloa Mauka, LLC, Waikoloa Highlands, Inc., proposed to make investments in the US movie industry promising good profit. Arch Ltd invested through its affiliated company, Pulham Holdings Ltd, funds for the purchase of profit participation in 14 (fourteen) movies. Investments in the amount of \$92 020 905 USD has been effected during 2010-2013 through Envision Entertainment Inc., the owner and director of which was Stefan Martirosian. Envision Entertainment has been purchasing profit participations in different movies for the funds transmitted by Pulham, and then it transferred to Pulham the profit participations purchased by means of assignment.

In addition, as per Pulham's request, Envision used to sell Pulham's interest in most movies to other companies, and accumulated the profits and investments at its account with Comerica Bank.

In reply to urgent requests to transfer accumulated profits back to Pulham, Envision found excuses for not doing it. Only in summer of 2017, it was found out that all contracts on rights transfer from Envision to Pulham, as well as selling of Pulham's interest to other companies turned up to be a fake. In reality all the movies during all that time had been owned by Envision that in the person of its director and owner by means of fraudulent actions stole \$92 020 905 USD. The funds have been spent by Martirosian on casino and purchase of its own businesses. Since all investments have been effected from ABB (ARMBUSINESSBANK CJSC) located in the territory of the Republic of Armenia, Pulham filed to the Prosecutor's Office of the Republic of Armenia an application of the fraud committed. Special investigation authority of the Republic of Armenia opened a criminal case on the grounds of Article 178, part 3, paragraph 1 (Fraud) of the Criminal Code of the Republic of Armenia against Stefan Martirosian.



At the same time, a request was sent to Russia for an extradition of Stefan Martirosian while there. On October 25, 2017 Domodedovsky Court of Moscow took a decision on detainment and arrest of S. Martirosian.

Then on May 25, 2018 Moscow City Court took a decision on extradition of Stefan Martirosian to Armenia. S. Martirosian and his lawyers lodged a complaint against this decision with the Supreme Court of the Russian Federation. At present, this complaint is pending decision by the Supreme Court (respective document will be provided). At present, Pulham through the law firm Baranov & Witternberg, LLP 1901 Avenue of Starts, Suite 1750, Los Angeles, California 90067, Michael M. Baranov, Esq. takes legal steps in relation to Stepan Martirosian in order to file a lawsuit, as well as to initiate a criminal case (please see attachment).

In addition, other fraudulent, deceitful actions of S. Martirosian have been found out.

S. Martirosian was a director of Vitoil Corp, the owner of which had been Arch Bahamas.

In 2005, Arch Ltd transmitted funds in the amount of \$1 625 000 USD to Vitoil to purchase a land parcel in Malibu.

Vitoil, represented by its director S. Martirosian, purchased the Malibu parcel but registered on Vitoil a title to the only one 35-acre lot. In 2018, we managed to find out that in reality two lots were sold of 35 and 17 acre areas. Vitoil paid \$1 625 000 USD but received only a 35 acre lot. The second lot of 17 acre area was a part of the cost of \$1 625 000 USD. Stefan Martirosian registered a title to it on companies owned by him, i.e. he obtained the property by means of fraudulent conversion or fraudulent misappropriation.

On July 16, 2018 Vitoil filed a suitcase through the lawyer, Michael Baranov, to the Superior Court of the State of California for the County of Los Angeles against S. Martirosian and the companies owned by him (please see the attachment).

In 2017, when we found that terms and conditions of subdivision were not met or fulfilled, we managed to only satisfy terms and conditions of affordable housing by transfer of 11.71 acre land to the County. Unfortunately, as a result, we had no enough time to fulfill all other terms and conditions.

1 MICHAEL M. BARANOV - Bar No. 145137  
2 BARANOV & WITTENBERG, LLP  
3 1901 Avenue of the Stars, Suite 1750  
4 Los Angeles, California 90067  
5 Tel: (310) 229-3500

CONFORMED COPY  
ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

6 Attorneys for Plaintiff, VITOIL CORPORATION

JUL 16 2018

Sherri R. Carter, Executive Clerk/Clerk  
By: Glorietta Robinson, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF LOS ANGELES  
9

10 VITOIL CORPORATION, a California  
11 corporation,

12 Plaintiff,

13 -vs-

14 STEPAN MARTIROSIAN, an individual,  
15 MALIBU HILLS ESTATES, LLC, a  
16 Delaware limited liability company, HIGH  
17 SEA BREEZE, LLC, a California limited  
18 liability company, MENA LLC, a Colorado  
19 corporation, and DOES 1-100, inclusive,

20 Defendants.

Case No.

**BC 7 1 4 0 1 4**

**COMPLAINT FOR DAMAGES AND  
DECLARATORY RELIEF**

21 COMES NOW, plaintiff VITOIL CORPORATION, a California corporation (hereinafter  
22 referred to as the "Plaintiff"), and alleges as follows:

23 1. At all times herein mentioned, plaintiff VITOIL CORPORATION ("VITOIL")  
24 was a corporation, organized under the laws of the State of California and conducting business in  
25 Los Angeles County, State of California.

26 2. Defendant STEPAN MARTIROSIAN ("MARTIROSIAN") was an individual  
27 residing within Los Angeles County, State of California.

28 3. Through all relevant times and until August 2017, MARTIROSIAN was the  
President, Secretary, Chief Financial Officer and sole Director of VITOIL. During this time,

**COMPLAINT**

1 MARTIROSIAN controlled all of VITOIL's operations and finances, and had control of its  
2 corporate records and documents.

3 4. Defendant MALIBU HILLS ESTATES, LLC, is a limited liability company,  
4 organized under the laws of the State of Delaware and doing business in Los Angeles County,  
5 State of California.

6 5. Defendant HIGH SEA BREEZE, LLC, is a limited liability company, organized  
7 under the laws of the State of California and doing business in Los Angeles County, State of  
8 California.

9 6. Defendant MENA, LLC, is a corporation, organized under the laws of the State of  
10 Colorado and doing business in Los Angeles County, State of California.

11 7. Plaintiff does not know the true names of defendants sued herein as DOES 1  
12 through 100, inclusive, and therefore sues them by those fictitious names.

13 8. Unless otherwise alleged in this complaint, plaintiff is informed and believes, and  
14 on the basis of that information and belief alleges, that at all times mentioned in this complaint,  
15 each of the defendants was an agent and/or employee of their codefendants, and in doing the things  
16 alleged in this complaint, was acting within the course and scope of that agency and employment.

17 9. Plaintiff is informed and believes, and thereon alleges, that each of the individual  
18 defendants exercised such control and dominion over the business entity codefendants so as to  
19 make them their mere alter egos and instrumentalities and, as a result, each of the business entity  
20 codefendants' corporate and/or limited liability company shields should be disregarded and the  
21 business entity defendants rendered mere instrumentalities and alter egos of the controlling  
22 defendants.

23  
24 **FIRST CAUSE OF ACTION FOR BREACH OF FIDUCIARY DUTY**

25 **(Against All Defendants MARTIROSIAN and DOES 1 through 25)**

26 10. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 9 of  
27 the Complaint as though set forth in full herein.

28

1           11. On or about October 2005, MARTIROSIAN represented to VITOIL that he was  
2 acquiring on its behalf a parcel of vacant land located in Malibu, California, described as "0"  
3 Anacapa Drive, Malibu California ("Real Property") for \$1,625,000 from Russell A. Smith  
4 ("Smith") and that the Real Property consisted of parcel no. 4470-005-014 ("Parcel 1"). A true  
5 and correct copy of the purchase agreement is attached hereto as Exhibit "A".

6           12. Unknown to VITOIL, Smith was a straw buyer, acting on behalf of and under the  
7 direction of MARTIROSIAN, who has acquired prior to VITOIL's acquisition of Parcel 1 from  
8 the real sellers of Real Property not only Parcel 1 but also an adjoining parcel, no. 4471-027-020  
9 (Parcel 2). Smith acquired both parcels with VITOIL's funds, provided to him by  
10 MARTIROSIAN and quitclaimed title to Parcel 2 to various entities controlled by  
11 MARTIROSIAN. A true and correct copy of the Escrow Instructions from Terra Coastal  
12 Escrow and cancelled checks are attached hereto as Exhibit "B". MARTIROSIAN did not  
13 disclose to VITOIL that he had acquired Parcel 2 with its funds, and that Parcel 2 was part of "0"  
14 Anacapa Drive and that title to it should have been transferred to VITOIL.

15           13. Thereafter, defendant MARTIROSIAN caused the transfer of title to Parcel 2 to  
16 defendant Malibu Hills Estates, LLC, a California limited liability company, which then  
17 conveyed title to Parcel 2 to defendant High Sea Breeze, LLC, a California limited liability  
18 company ("HSB"), which then conveyed Parcel 2 to Mena, LLC, Colorado corporation, which  
19 then conveyed it back to HSB, which then conveyed it back to Mena, LLC on or about May 17,  
20 2017. Mena, LLC is conducting business from MARTIROSIAN's Aspen Colorado home.  
21 Plaintiff is informed and believes that all of these entities are controlled and/or owned by  
22 MARTIROSIAN.

23           14. Defendant MARTIROSIAN was the sole officer and director of VITOIL at all  
24 relevant times, by virtue of which he owed plaintiff a fiduciary duty of utmost good faith.

25           15. Defendant MARTIROSIAN breached his fiduciary duty to plaintiff by entering  
26 into the transaction for transfer of the Parcel for their own purposes, retaining control thereof,  
27 and secreting the proceeds therefrom, all to plaintiff's detriment, and by his continuing false  
28 representations to plaintiff that Real Property consisted solely of Parcel 2, as well as his

1 diversion of plaintiff's funds to purchase Parcel 2 and secreting his self-dealing transaction in  
2 connection with his fraudulent acquisition and diversion of Parcel 2. In addition, plaintiff is  
3 informed and believes that MARTIROSIAN used plaintiff as his personal piggybank, and has  
4 diverted significant sums to his personal accounts or to those of persons and entities controlled  
5 by him.

6 16. As a result of defendants' actions, as set forth above, plaintiff suffered damages  
7 according to proof at trial.

8 17. The acts of defendants were willful, malicious, fraudulent and intentional and  
9 entitle plaintiff to an award of punitive damages, in an amount sufficient to punish the  
10 defendants.

11  
12 **SECOND CAUSE OF ACTION FOR FRAUD AND DECEIT - CONCEALMENT**

13 **(Against All Defendants MARTIROSIAN and DOES 1 through 50)**

14 18.. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 17  
15 of the Complaint as though set forth in full herein.

16 19. Defendants, and each of them, concealed the fraudulent transaction alleged above,  
17 and did not disclose the transaction, nor the terms thereof to plaintiff but instead continued to  
18 falsely represent to plaintiff that the Real Property owned by plaintiff consisted solely of Parcel  
19 1. In addition, plaintiffs are informed and believe and based thereon allege, that defendants  
20 diverted substantial sums of plaintiff's money and other assets for their personal purposes.

21 20. Plaintiff had no means to discover the true nature of the transaction due to  
22 defendant MARTIROSIAN occupying all of plaintiff's officer positions and his being its sole  
23 director and controlling its records and finances until his termination in or about August 2017.

24 21, Plaintiff had relied on MARTIROSIAN false and fraudulent representations due  
25 to his being plaintiff's fiduciary and the person in control of all aspects of its operations as well  
26 as its books and records and believed them to be true.

27 22. As a result of defendants' fraudulent actions, as set forth above, plaintiff suffered  
28 damages according to proof at trial.

1           23.     The acts of defendants were willful, malicious, fraudulent and intentional and  
2 entitle plaintiff to an award of punitive damages, in an amount sufficient to punish the  
3 defendants.

4  
5                                   **THIRD CAUSE OF ACTION FOR CONVERSION**

6                   **(Against All Defendants MARTIROSIAN and DOES 1 through 50)**

7           24.     Plaintiff realleges and incorporates herein by reference paragraphs 1 through 23  
8 of the Complaint as though set forth in full herein.

9           25.     Plaintiff was the owner of \$1,625,000 which were used to purchase Real Property,  
10 which should have included Parcel 2.

11           26.     Defendants intentionally and substantially interfered with plaintiff's property  
12 described in the preceding paragraphs by taking possession of Parcel 2 and/or refusing to return  
13 to plaintiff the same and by wrongly converting plaintiff' funds to acquire title to Parcel 2  
14 without plaintiff's knowledge and consent, to their self-benefit.

15           27.     Plaintiff did not consent to the acts of defendants alleged above.

16           28.     Plaintiff has been harmed as a result of being deprived of title to Parcel 2 and  
17 funds to acquire it and has suffered damages in an amount to be proven at trial.

18           29.     The acts of defendants were willful, malicious, fraudulent and intentional and  
19 entitle plaintiff to an award of punitive damages, in an amount sufficient to punish the  
20 defendants.

21  
22                                   **FOURTH CAUSE OF ACTION FOR UNFAIR COMPETITON**

23                   **(Against All Defendants)**

24           30.     Plaintiff realleges and incorporates herein by reference paragraphs 1 through 29  
25 of the Complaint as though set forth in full herein.

26           31.     Defendants' acts as alleged herein, including, *inter alia*, conspiring to deprive  
27 plaintiff of its rights in Real Property and Parcel 2, constitute acts of unfair competition within  
28 the meaning of Cal. Bus. & Prof. Code §17200, *et seq.*

1           32. Plaintiff has no adequate or speedy remedy at law for these acts because they have  
2 caused, and will continue to cause, irreparable injury to plaintiff. Plaintiff is entitled to an  
3 injunction restraining defendants, their employees, agents, employees, and all persons acting in  
4 concert with them, from engaging in further acts of unfair competition, and restraining them from  
5 obtaining any commercial advantage or unjust enrichment as a result of their unlawful conduct.

6           33. Defendants' conduct has also proximately caused plaintiff to sustain losses of  
7 money and property, thereby entitling it to restitution from defendant, or each of them.

8  
9    **FIFTH CAUSE OF ACTION FOR DECLARATORY RELIEF**

10   **(Against All Defendants)**

11           34. Plaintiff realleges and incorporates herein by reference paragraphs 1 through 33  
12 of the Complaint as though set forth in full herein.

13           35. An actual controversy has arisen in that plaintiff alleges that it is entitled to an  
14 ownership interest in Parcel 2, since the transfer of title thereto was unauthorized and fraudulent.

15           36. Plaintiff desires a judicial determination of the respective parties' rights and  
16 interests in and to Parcel 2 and a declaration that plaintiff has right, title, estate, lien or interest in  
17 or to Parcel 2.

18  
19           WHEREFORE, Plaintiff prays judgment against Defendants, and each of them, as  
20 follows:

21           1. For compensatory damages in the sum to be proved at trial.

22           2. For general damages in the sum to be proved at trial.

23           3. For a judicial declaration that transfers of title to Parcel 2 should be void and  
24 rescinded, and that plaintiff is 100% owner of Parcel 2.

25           4. For a permanent injunction restraining defendants, their employers, agents,  
26 employees, and all persons acting in concert with them, from engaging in further acts of unfair  
27 competition, and restraining them from obtaining commercial advantage or unjust enrichment as  
28 a result of their unlawful conduct.




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- 5. For exemplary and punitive damages in the sum to be proved at trial.
- 6. For treble damages.
- 7. For prejudgment interest on all amounts claimed.
- 8. For an accounting of defendants' books and records pertaining to the Real Property and all transactions derived therefrom and related thereto.
- 9. For reasonable attorney's fees incurred herein.
- 10. For costs of suit incurred herein.
- 11. For such other and further relief as the court may deem proper.

DATED: July 16, 2018

BARANOV & WITTENBERG, LLP

By: 

MICHAEL M. BARANOV  
Attorneys for Plaintiff, VITOIL  
CORPORATION

## EDUCATION

- 1980**      **Bachelor of Arts, St. John's College, Santa Fe, New Mexico**  
              **Graduated Thorne Fellowship**  
              **Senior Essay: *Frankenstein - The Modern Symbol of Dread.*** Essay explored whether the enlightenment scientific vision inevitably conflicts with social and cultural norms.  
              Graduated Thorne Fellowship
- 1980**      **University of New Mexico, Organic Chemistry**
- 1980**      **Brandeis University, Waltham, Massachusetts**  
              **Summer Organic Chemistry Practicum**
- 1984**      **University of Hilo, Real Estate Finance**
- 1986**      **Graduate Realtor Institute (GRI)**  
              **Commercial/Investment Real Estate Institute of**  
              **The National Association of Realtors**  
              **Awarded Certified Commercial Investment Member**  
              **(CCIM) designation**  
              **Course Work:**  
                  **CI 100 Marketing Techniques**  
                          **for Commercial Property**  
                  **CI 101 Fundamentals of**  
                          **Real Estate Investment & Taxation**  
                  **CI 102 Fundamentals of**  
                          **Location & Market Analysis**  
                  **CI 103 Advanced Real Estate**  
                          **Taxation and Marketing**  
                  **CI 301 Decision Analysis for**  
                          **Commercial Real Estate**  
                  **CI 405 Course Concepts Review**

## CONTINUING EDUCATION COURSES

- 08/2001**      **What Numbers Really Count**  
              Topics covered in the course include the economic modeling for land, commercial, and multi-family development using various methodologies to value real estate entitled for development. The course included use of software licensed by Investit Software Inc., North Vancouver, B.C.
- 06/2001**      **Comprehensive 1031 Exchange**  
              Topics included Starker exchanges, tenancy in common, and reverse exchanges under I.R.C. Section 1031.
- 09/2006**      **Multi-Family Residential Development In Hawaii:**  
              Presenters were Kenton Beal, ENPRO Environmental; Joseph Farrell, AIA, Architects Hawaii Ltd.; Jason C. Kott, Atlas Insurance Agency, Inc.; Melvin Tanaka, Pacific Rim Bank; and Peter H. Cooper, Construction Management & Development, Inc.

Topics covered included initial entitlement and environmental investigation, identification of highest and best use, design conceptualization, business plan development, risk issues, and financing for development of high rise multi-family in Hawaii. Lorman Education Services (www.lorman.com) - Seminar ID 363899

**04/2017 Real Estate Development: Acquisitions**

An overview of the issues and procedures to follow to select and acquire property for development. The course focused on the various stages of the development process and risks associated with each stage and how risks can be mitigated through careful investigation and due diligence procedures to determine the legal, regulatory, technical, and financial feasibility for development of real estate.

**BUSINESS EXPERIENCE**

**1984 -1986 Real Estate Salesperson**

**1987 - present Real Estate Broker**

**1992 - present Certified Commercial and Investment  
Member Designation, CCIM**

**1989 - present President, JKL Development Corporation**

**1991 to 1999 General Partner, Kulaimano Associates**

**Residential Developer** – Developed a single family residential project of 28 residences targeted to the so-called gap housing market, i.e. families whose incomes are too high to qualify for government subsidized housing, but too low to purchase the median price housing in the market.

**2009 - 2017 Vice President, Kennedy Wilson Commercial Investments**

Acquired Wai'nana at Po'ipu and completed the development the unfinished subdivision to bring to market 6 houses and 63 house site lots. Managed and oversaw the due diligence for Kohanaiki, 425 acre luxury resort residential project on the N. Kona coast of island of Hawai'i.

**CAREER HIGHLIGHTS**

**2009 to 2017 Kennedy Wilson: Worked in a wide range of capacities to acquisition, development management, and disposition of real estate developments.**

**1990 - Present Investment and Brokerage Transactions: completed over 140 transactions with gross sales volume of over \$450,000,000 including agricultural, commercial and development land in Hawaii, Texas and other Pacific Islands. Half of the properties were located on the Hamakua Coast of the Island of Hawaii. Other properties brokered include parcels located in all districts of the islands of Hawaii, Maui, Kauai, and Oahu.**

1989 - 1992                      Brokered various properties located in the Dallas/Fort Worth Metroplex from the Resolution Trust Corporation (RTC), Federal Deposit Insurance Corporation (FDIC) and Federal National Mortgage Association (Fannie Mae). Properties included an office building, residential apartment buildings, shopping center, completed residential subdivision lots, and residential rental properties.

1992 I received the Certified Commercial Investment Member (CCIM) designation from the Commercial Investment Real Estate Institute.

### MEMBERSHIPS & ASSOCIATIONS

#### CURRENT

Hawaii Isle Board of Realtors (HIBR)  
Hawaii Association of Realtors (HAR)  
National Association of Realtors (NAR)

#### HIBR

1994                      Secretary  
1995-96                Director  
1987-2002            Professional Standards Committee  
2001                    President

#### HAR

1994-97                Standard Forms Advisory Committee

#### CCIM Hawaii & National

St. John's Alumni Association, Santa Fe, New Mexico

Rotary Club of Hilo Bay

1995-96 Director - Portuguese Chamber of Commerce, Hilo, Hawaii

#### Community Service

**Malamalama Warlord School - Director 2012 to Present**

Treasurer and Director 2013 to 2017. Helped to develop a annual budget an for the Pre-School to 8<sup>th</sup> grade private school with ~120 students employing the Warlord educational methods. Worked with community, teachers, and administrator in successfully getting the school accredited by Western Association of Schools and Colleges, Association of Waldorf Schools of North America.

#### **Wai'nani at Po'ipu**

Treasurer – Elected for 3-year term starting July 2017

**Kiahuna Maintenance District** – Director representing Wai'nani at Po'ipu

**EXPERIENCE SIGNIFICANT TO REAL ESTATE DEVELOPMENT  
MANAGEMENT AND BROKERAGE Joel K. LaPinta, CCIM**

**2015-December Kau Coffee Farms and Ranchlands advised Lehman Brothers Holding, Inc.** Advised client in complex development and ownership issues and eventual disposition of a complex portfolio of agricultural, residential, and industrial lands. Managed the over 50 farm leases to 36 coffee farmers with ~300 acres cultivated in coffee, cellular towers and an FAA communication tower site, and various pasturage leases. The eventual disposition included working with the diverse stake holder interests including the tenant coffee farmers, state and county politicians and officials, NGOs interested in the coffee lands. Resolution included new leases with non-disturbance provisions for the tenant farmers and first right of refusal to acquire the title to the land they were farming after lands subdivided and developed under a Planned Unit Development regime. Sale also included coordination with the buyer to resell the ocean front acreage by a coalition of the Trust for Public Lands, State of Hawaii, and The Nature Conservancy. (The assets sold in a bulk sale for \$10,400,000.)

**2015- June Sold Kamuela Inn (Waimea-Hawaii) hotel of 32 rooms priced for sale with strong revenues, occupancy; an investment opportunity. (\$2,650,000)**

**2014- July Sold 1,670 acres golf course and entitlements for 180 lots home sites fna 'Ainamalu at Hu'ehu'e Ranch and Makalei Golf Club course. (\$7,000,000)**

**2014 - June Sold as exclusive broker for Kamehameha Investments a 24.5 Acre development site that is zoned for Multiple Residential development part of the master planned Keauhou Resort community, Kailua-Kona, Hawai'i. (\$2,900,000)**

**2013 - December Sold 32 Vacant Lots in Wai'nani at Po'ipu to major U.S. merchant builder for (\$8,800,000)**

**2011-2013 Participated in acquisitions and dispositions of real estate valued at approximately \$175MM in my role as an employee at Kennedy Wilson.**

**2011- July Sold LH interest in Waikiki Apartment building. (\$1,300,000)**

**2010-2011 Dec-Mar Kennedy Wilson Auction Group**  
Sold six model homes at Po'ipu Project. I managed various aspects including acting as Hawaii broker, organizing disclosure materials, managing ownership's preparation of homes for sale, final negotiation with bidders, and follow through with escrow closing

details.development part of the master planned Keauhou Resort community, Kailua-Kona, Hawai'i. (\$2,900,000)

- 2013 – December** Sold 32 Vacant Lots in Wai'nani at Po'ipu to major U.S. merchant builder for \$8.8MM.
- 2011-2013** Participated in acquisitions and dispositions of real estate valued at approximately \$175MM in my role as an employee at Kennedy Wilson.
- 2011- July** Sold LH interest in Waikiki Apartment building for \$1,300,000
- 2010-2011 Dec-Mar** Kennedy Wilson Auction Group sold the six model homes at Po'ipu Project. I managed various aspects including acting as Hawaii broker, organizing disclosure materials, managing ownership's preparation of homes for sale, final negotiation with bidders, and follow through with escrow closing details.
- 2010 –October** Sourced and lead the acquisition of a resort residential development on the Island of Kauai near Po'ipu beach. (\$12,250,0000)
- 2010-July** Conducted a Sealed Bid Sale offering 60 separate properties and Notes secured by first mortgages.
- 2009-December** Hired by Kennedy Wilson as Vice President for the Commercial Investment Group in Hawaii.
- 2009** Advised Western United Creditors Trust in the alternative development of a 120-acre mixed property zoned Project District for Commercial, Single Family and Multi-Family development (March 2009 - \$6,500,000)
- 2009-2010** Appointed Trustee by U. S. Bankruptcy Court to liquidate assets of various secured notes of creditors. Real Estate included 13,000 acres forestland on the Island of Hawai'i and a partially completed single family housing development on the Island of Oahu.
- 2009** Purchased 18 Unit Apartment Building in Waikiki & leased up as a long stay executive rental project catering to professionals on temporary assignments in the state. (Jan 2009 - \$900,000)
- 2008** Sale of two Mixed Commercial-Industrial Zoned (MCX) lots in Kea'au, Ola'a, Hawai'i at Ulupono Town Center. Sale of two lots consisting of over 106,000 square feet to Longs Drugs Stores. (May

**2008 - \$1,710,000)**

- 2007**      **Hotel Zoned Oceanfront Property at Reeds Bay.** Sold the property with a complicated land use issue due to the unusual shoreline issues and historic use of the property. In addition to the sales of the fee simple interest in the property I negotiated the sale of the leasehold interest. **(April 2007 - \$5,050,000)**
- 2007**      **Site at the corner of Namahana St. & Ala Wai Blvd., Waikiki.** As a principal and broker, I marketed and sold the 23,750 square foot Apartment zoned parcel formerly planned to be the site of the Royal Kahilo Condominium. The site sold to a Japanese developer and investor group for development of a 44 unit residential apartment. **(January 2007 - \$4,500,000 U.S.)**
- 2006**      **Waikiki Super Block Site, Kalakaua Avenue, Honolulu, Hawaii.** Selected as the exclusive broker for the sale of this nearly 2.2 acres site zoned for development of high density residential and commercial high-rise (up to 350 feet tall). I vetted and negotiated with over a half dozen bidders, delivered evaluation materials, communicated the specific opportunity and challenges inherent to the site to each bidder, and advised in the analysis of each offer. I advised the Seller and directly negotiated with the successful bidder. **(June 2006 - \$21,000,000 U.S.)**
- 2005**      **University Palms, Hilo, Hawaii.** Represented the Seller of the property. The apartment building located across the street from the University of Hawaii's Hilo campus was acquired in 2003 and converted for University student housing in 2004. **(December 2005 - \$3,250,000 U.S.)**
- 2005**      **Ulupono Center, Kaaui, Hawaii.** Represented the Seller of the property. The Seller had secured land use approvals and construction plan approval for the subdivision of into 12 MCX (MCX allows office commercial, retail and light industrial uses. **(November 2005 - \$2,200,000 U.S.)**
- 2005**      **Royal Kahili Condominium Site, Waikiki, Honolulu.** Acquisition agent for the purchase of this 23,750 square foot site in Waikiki zoned for development of residential apartments. **(Acquisition January 2005 - \$1,700,000 U.S.)**

- 2004**                    **Big Island Country Club:** Advised Intrawest Corporation in the sale of the property.  
(Sale closed June 2004 - \$10,000,000 U.S.)
- 2003-2004**            **Waikoloa Heights** Was the exclusive Broker for the sale of 866 acre urban designated and residential zoned land with entitlement for development of 2,500 residential units.  
(Sale closed March 2004 - \$10,000,000 U.S.)
- 2002**                    **Kealakekua Development Corporation Hawai'i:** Exclusive advisor in the sale of approximately 11,500 acres of ranch land.  
(Closed December 2002 -- \$7,000,000 U.S.)
- 2002**                    **Big Island Country Club Pu'u anahulu, North Kona, Hawaii.** Represented and advised Intrawest Corporation of Vancouver Canada (NYSE: IDR) in the purchase of an existing 18-hole P. Dye designed golf course on 425 acre site with entitlements for development of residential lots, club house, and 40 unit lodge.  
(Closed January 2002 – Price is Confidential.)
- 2001**                    **Waikoloa Beach Resort Lot No. 3, Phase IV:** Brokered the sale of a 9.78 acre residential golf course front development site entirely surrounded by a Robert Trent Jones signature golf course. The property is located within the Waikoloa Beach Resort on the South Kohala coast. (\$6,750,000)
- 2001**                    **Napili, West Maui:** *Sold 3 contiguous parcels for possible residential development, a total land area of approximately 10.62 acres located just south of Napili town center. (\$1,850,000)*
- 2001**                    **Kaunala Beach, North Shore, Oahu:** Sold approximately 16 acres with 1,800 linear feet of beach front and consisting of 30 existing lots. (US\$7,500,000)
- 2001**                    **Waikoloa Beach Resort Lot No. 7, Phase III:** Exclusive broker for Taisei Corporation of Japan the sale of a 22.034 acres property entitled for development of up to 220 residential units, fee simple, located within the Waikoloa Beach Resort. (US\$8,000,000)
- 2000**                    **Kailua Bay Resort:** Exclusive broker for sale of a 95-unit residential apartment complex. (\$4,600,000)



- 2000                    **Selected by the Resolution and Correction Corporation as exclusive broker in conjunction with Deuel International Group of Laguna Beach California and Recruit Cosmos Company, Ltd. of Japan for five properties in Hawai'i and Guam with a total market value of approximately U. S. \$30,000,000.**
- 1999                    **Exclusive listing broker for 50 acres in Hilo zoned for residential development owned by Blue Chip Corporation of Japan. (US\$1,150,000)**
- 1999                    **Pepeekeo Farm Estates Subdivision:** Acquired approximately 47 acres from Hawaii Farm and Land Company, LTD. (fka C. Brewer Homes, Inc.). I was the managing partner and own 50% of the limited liability company to develop and sell 7 lots. All the lots were sold by March 2003.
- 1999                    **Waikoloa Beach Resort Lot No. 6, "Kamalani Project":** Seller's broker for a ocean front site entitled for up to 450 residential units in a master planned resort development. I prepared the marketing brochure, developed a marketing plan and executed it, presented the project to the ultimate purchaser and assisted in expediting the purchaser's due diligence process and facilitated the closing of the transaction.  
**(Approximately a U.S \$12,000,000)**
- 1998                    **Papaikou former "Plantation Manager's House":** Advised G. E. Capital on highest and best use and subdivision process, costs, and marketability of product.
- 1997                    **Honoka'a, Hamakua:** Acquired and managed partnership in a 10 acre residential zoned parcel with preliminary approval for 38 lots subdivision and a 5 acre residential parcel with preliminary plat approval for 15 lots.
- 1997                    **Mt. View Country Estates, Puna:** Exclusive broker and advisor to the AMFAC/JMB Hawaii, Inc. in the sale of 1,800 acres consisting of 42 lots of record to an investor/developer.
- 1996                    **N. Kulani Rd., Puna:** Seller's broker (AMFAC/JMB Hawaii, Inc.) for the sale of 100 acres, zoned AG-5A, to a partnership that developed a 9 lots subdivision.

- 1996**                    **Pangloss LP, N. Kulani Rd., Puna:** General partner of a limited partnership that acquired 100 acres and subdivided it into 7 lots.
- 1995**                    **Ola'a, Puna:** (AMFAC/JMB Hawaii, Inc.) for sale of 50-acre parcel for an 8 lots subdivision.
- 1995**                    **Kurtistown, Puna:** Seller's agent (AMFAC/JMB Hawaii, Inc.) for sale of 8-acre residential site to a developer.
- 1994**                    **Puna:** I was the exclusive broker for approximately 4,000 acres of land consisting of various parcels owned by Puna Sugar Company, Inc. I advised the owner of Puna Sugar, AMFAC/JMB Hawaii, Inc. on development potential taking into consideration zoning, entitlement, and development cost. I produced economic models for valuation purposes of the various parcels lands with development potential.
- 1991 -1994**            **Nani Malio Subd., S. Hilo, Hawaii:** I was a general partner owning 50% of the partnership that acquired and developer a 281 lot residential subdivision. I was responsible for all managing all aspects of the development and marketing of the project. I obtained financing for \$875,000 construction of infrastructure that included county water and sanitary sewer, residential curbs and sidewalks and underground utilities, registered project with DCCA, and marketed the project consisting of 28 moderately price residential lots. (I used a combination of developer rebates and first-time home buyer lending programs that allowed the buyers to purchase with a construction loan with only 3% of the total purchase contributed to the closing. Average price of lots was \$62,000 and the average house and lot package was \$160,000.)
- 1990**                    **Papaaloa Homestead, N. Hilo:** Acquired a 2.2-acre residential zoned parcel and resold it for development into 7 lots.
- 1990**                    **Kawailani Estates, S. Hilo:** Acquisition of 6-acre urban parcel for a proposed subdivision into 21 residential lots.
- 1990**                    **Advised the buyer of 98,000 square feet of shopping center in Hulen Park, Texas for Resolution Trust Corporation.**
- 1990**                    **Advised the buyer of three residential subdivision in the in the Dallas/Fort Worth Metroplex, Texas.**

## Joel K. LaPinta, CCIM Realtor®

- 1990**                    **Keopu Mauka, N. Kona:** I was the seller's agent for 35-acre parcel zoned AG-5A to a developer for a proposed subdivision.
- 1989**                    **Papaaloa Homesteads, N. Hilo:** I was the managing partner with 10% equity interest in two residential zoned ocean front parcels and brokered the sale of each.
- 1988**                    **Piha Homesteads:** I negotiated the acquisition of 230 acres, under and managed the entitlement process, marketing and sale of 13 lots.
- 1986**                    **Lalakea Pond (6 Lot Ocean Front Subdivision):** Acquired with partners a 2 acre ocean front parcel and managed the development and sales of six ocean front residential lots.
- 1984 – 1985**            **I was employed by a Hawai'i land developer and dealer to manage the development activities for the sale of 3,000 acres consisting of 33 lots.**

### SIGNIFICANT CONSULTING ASSIGNMENTS

- 1. GE Capital Major Acquisition Division:** Broker's estimate of value for large land holdings including over 200 parcels. Provided a bulk sale valuation analysis. (The assignment included approximately 80,000 acres.)
- 2. Andy Beal, President of Beal Bank of Dallas Texas:** Advised on availability of large land holdings on the island.
- 3. Mauna Kea Agribusiness, Inc.:** Consultant for registration of three subdivisions under state's Uniform Land Sales Practices Act. (The assignment included 81 lots in three projects.)
- 4. Castle & Cooke Hawaii:** In conjunction with Realty Group International advised on alternative disposition of development land in Waikoloa.
- 5. JPL Hawaii, LLC: Ainamalu at Waikoloa Beach Resort:** Created a business model for the developer/owner to present to the capital markets for equity and debt funding. I built the business model proceeding in a scientifically avoiding making any assumptions as to the financial viability of the project. I investigated and did forensic analysis of cost to date for the horizontal land development and vertical construction and landscaping components, then worked with the construction bids to date and approved development plans, included amenity coast, off-site infrastructure, then

Joel K. LaPinta, CCIM Realtor®

included the price points and marketing time to sell 218 single family homes, 20 vacant lots, and 60 residential condominium.

William P. Kenoi  
Mayor



808-89-000179  
BJ Leithead Todd  
Director

Margaret K. Masunaga  
Deputy

## County of Hawai'i

### PLANNING DEPARTMENT

Aupuni Center • 101 Pauahi Street, Suite 3 • Hilo, Hawai'i 96720  
Phone (808) 961-8288 • Fax (808) 961-8742

July 30, 2009

Sidney Fuke  
Planning Consultant  
100 Pauahi Street, Suite 212  
Hilo, HI 96720

Dear Mr. Fuke:

**FINAL SUBDIVISION APPROVAL NO. SUB-09-000887**

**FINAL PLAT MAP**

**SUBDIVIDERS: WAIKOLOA MAUKA, LLC**

"Wailani Bulk Lots"

Subdivision of Lot 2-B

Into Lots 2-B-1, 2-B-2, & 2-B-3

Waikoloa, South Kohala, Island of Hawai'i, Hawai'i

TMK: (3) 6-8-002:016

This is to acknowledge receipt of ten (10) copies of the final plat map dated July 7, 2009; CD of the final plat map in digital format; Surveyor's Certification of Staking; and filing fee of \$ 325.00 for the referenced application for 3 bulk lots.

This application is being processed under Section 23-13 wherein the director may make exceptions to the Subdivision Code, Chapter 23, Hawai'i County Code (HCC) where there is a plan and program for a complete community development that provides adequate public spaces and improvements for the circulation, recreation, light, air, and service needs of the tract when fully developed and populated and covenants or other legal provisions are provided to assure conformity to and achievement of the plan. The purpose of this particular action is to subdivide out an area of the project site in the hopes of establishing a Community Facilities District for "Wailani" (SUB-89-000179), formerly known as "Waikoloa Heights". We note that Lot 2-B-1 affects Lot 400 of said pending subdivision and will need to be reflected on any future plat map submission(s) of SUB-89-000179.

*Hawai'i County is an Equal Opportunity Provider and Employer*

Exhibit F

Sidney Fuke  
Planning Consultant  
Page 2  
July 30, 2009

Please be informed that final subdivision approval for recordation is hereby granted to the final plat map as attached herewith inasmuch as all requirements of the Subdivision Code, Chapter 23, Section 23-13 related to Large Scale Development, as modified have been met.

You and the subdivider may wish to consult an attorney and surveyor for the preparation of the necessary legal documents and description of the certified final plat map for the purpose of recordation with the State of Hawai'i, Bureau of Conveyances.

By a copy of this letter, we are forwarding a copy of the certified final plat map to the listed officers for their file.

Copies of the certified final plat map are enclosed.

Should you have any questions, please feel free to contact Jonathan Holmes of this department.

Sincerely,



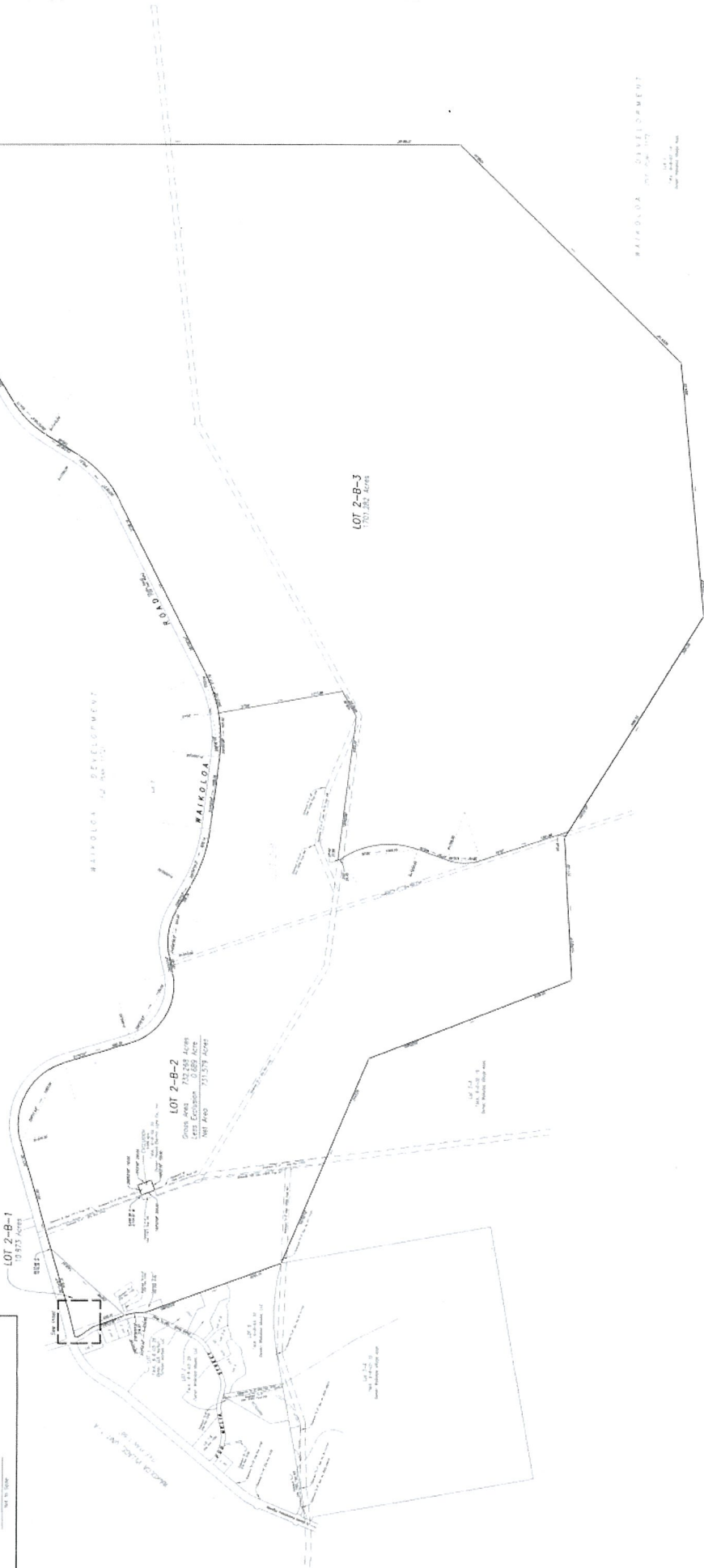
BJ LEITHEAD TODD  
Planning Director

JRH:lnm

P:\wp60\SUBDIV\Documents\subc2009-3\SUB-09-000887WaikoloaMaukaLLC FPMFSA.doc

Encls: Receipt # 475894  
2 Certified FPM

xc: Manager, DWS w/application & Certified FPM  
Director, DPW w/application & Certified FPM  
District Environmental Health Program Chief, DOH w/application & Certified FPM  
District Engineer, DOT w/application & Certified FPM  
PLNG-KONA w/Certified FPM  
Real Property Tax Division-Kona w/Certified FPM  
Tax Maps and Records Supervisor w/Certified FPM & CD  
DPW-ENG-KONA  
Jai Kaopuiki, LPLS, RM Towill Corporation  
WAIKOLOA MAUKA, LLC  
PUD 42; REZ 678; SUB-89-000179



**SUBDIVISION OF LOT 2-B**  
 BEING A PORTION OF ROYAL PATENT 5871, LAND COMMISSION AWARD 8521-B,  
 APANA 1 TO G. D. HUEI  
**INTO LOTS 2-B-1, 2-B-2, AND 2-B-3**

At Mahalo, Ewa Moku, State of Hawaii, Hawaii  
 To the King (for his Majesty) 4-4-00: 18  
 Owner: HAKOLOA MOA, LLC  
 Address: HAKOLOA MOA, LLC  
 CHAIRMAN OF PDSB



SUB. 09-000887  
 HAWAIIAN LAND COMMISSION  
 1500 Kalia Road, Suite 100  
 Honolulu, Hawaii 96813  
 Date: 11/13/09



H. P. TRAVIS, LICENSED SURVEYOR  
 1500 KALIA ROAD, SUITE 100  
 HONOLULU, HAWAII 96813  
 LICENSE NO. 1000

This map and subdivision are subject to Department of Energy, Transportation and Natural Resources approval.  
 This map is not valid until approved.  
 HAWAIIAN LAND COMMISSION, 1500 KALIA ROAD, SUITE 100, HONOLULU, HAWAII 96813.  
 HAWAIIAN LAND COMMISSION, 1500 KALIA ROAD, SUITE 100, HONOLULU, HAWAII 96813.  
 HAWAIIAN LAND COMMISSION, 1500 KALIA ROAD, SUITE 100, HONOLULU, HAWAII 96813.

Harry Kim  
Mayor



Neil S. Gytoku  
Housing Administrator

Lance M. Niimi  
Assistant Housing Administrator

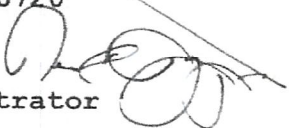
**County of Hawai'i**  
**Office of Housing and Community Development**

50 Wailuku Drive • Hilo, Hawai'i 96720 • (808) 961-8379 • Fax (808) 961-8685  
KONA: 74-5044 Ane Keohokalole Highway • Kailua-Kona, Hawai'i 96740  
(808) 323-4300 • Fax (808) 323-4301

December 07, 2016

**TRANSMITTAL**

TO: **Sidney M. Fuke**  
**Planning Consultant**  
**121 Waiānuenu Avenue, Suite 212**  
**Hilo, Hawai'i 96720**

FROM: **Neil S. Gytoku**   
**Housing Administrator**

SUBJECT: **AFFORDABLE HOUSING AGREEMENT WAIKOLOA HIGHLANDS**

**WE ARE TRANSMITTING THE FOLLOWING FOR YOUR INFORMATION:**

<u>ORIG</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	12/1/2016	Affordable Housing Agreement

Should you have any questions, please contact Alan Rudo at 961-8379.

Thank you.





LAND COURT

REGULAR SYSTEM

Return By Mail  Pick-Up To:

Sidney M. Fuke, Planning Consultant  
100 Pauahi Street, Suite 212  
Hilo, Hawai'i 96720

TITLE OF DOCUMENT:

AFFORDABLE HOUSING AGREEMENT

DEVELOPER: Waikoloa Highlands, Inc. a Colorado corporation, whose principal place of business and mailing address is: 401 N. Brand Blvd. Suite 726, Glendale, CA 91203

COUNTY: COUNTY OF HAWAII, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawaii 96720

TAX MAP KEY(S): (3) 6-8-002:016

(This document consists of 8 pages.)

## AGREEMENT

This Agreement is made and effective this 1<sup>st</sup> day of Dec., 2016 by and between **Waikoloa Highlands, Inc.**, a Colorado corporation, hereinafter referred to as "Developer", whose principal place of business and mailing address is 4316 Marina City Drive, Suite G101, Marina Del Rey, CA 90292, and the **COUNTY OF HAWAII**, a municipal corporation of the State of Hawaii, hereinafter referred to as "County", whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawaii 96720.

WHEREAS, the Developer proposes to develop the Highlands project consisting of 731.579-acres of real property located at TMK: (3) 6-8-002:016 and further depicted on **Exhibit A** hereto into 386 +/- residential-agricultural lots herein referred to the "Development Site"; and

WHEREAS, Chapter 11, Article 1 of the Hawaii County Code, relating to Affordable Housing Policy, authorizes the Mayor, the Office of Housing and Community Development (the "OHCD") or their duly authorized representative to enter into this Agreement with the Developer; and

WHEREAS, on March 13, 2003, County of Hawai'i Change of Zone Ordinance No. 13-29 became effective, amended Ordinance No. 07-127, which amended Ordinance No. 05-157, which amended Ordinance No. 95-51, which amended Ordinance No. 90-16, which reclassified lands from Agricultural 5-Acre (A5a) (Formerly Unplanned) and Multiple Family Residential – 1,500 Square Feet (RM-15.) to Residential – Agricultural 1 Acre (RA-1a) and Open (O), subject to Condition "E", which provides for the development of affordable housing lots as follows:

...To ensure that the goals and policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code relating to Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to final subdivision approval;

WHEREAS, the parties hereto have evaluated the various options available for development of the Affordable Housing Site to satisfy the affordable housing goals and policies of the State of Hawaii and County of Hawai'i; and

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, and pursuant to Chapter 11, Article 1 (Affordable Housing) of the Hawai'i County Code ("Chapter 11"), the parties hereby agree as follows:

1. In consideration of the mutual covenants in this Agreement, and pursuant to Chapter 11, Article 1 (Affordable Housing) of the Hawai'i County Code ("Chapter 11"), the parties hereby agree that upon compliance with the terms of the Agreement, the Developer shall have satisfied the requirements of Condition "E" of Ordinance No. 13-29.
2. The Developer shall subdivide and convey to Plumeria At Waikoloa LLC, a Hawai'i non-profit corporation, approximately 11.8+/- acres of land within a 14.951 acre area of the Development Site as depicted on **Exhibits B and C** hereto

and identified as Affordable Housing Site on **Exhibit D** hereto within 180 days of execution of this agreement.

3. If the efforts of the Developer to convey the Affordable Housing Site are delayed by any of the following (collectively, "Force Majeure"): (a) war, earthquake, fire, flood, volcanic activity or other similar natural disaster, or by general or industry-wide strike in the County of Hawaii, shipping strike in the State of Hawaii or on the continental United States, or (b) the failure of any Government Agencies to approve or consent to any matter for which such approval or consent is required within a reasonable time after the Developer has made a request therefor despite reasonable efforts on the part of the Developer to obtain such consent or approval, then, and in any such event, the time periods set forth in this Agreement for conveyance of the Affordable Housing Site shall be extended by the number of days that the Developer is delayed as a result of the specified event of Force Majeure.
4. This Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. This Agreement shall be recorded against the land by the Developer at the Bureau of Conveyances or with the Land Court of the State of Hawaii as applicable, within thirty days after being fully executed by the parties. The parties agree to take such actions and execute whatever other documents as are necessary to effectuate and carry out the intent of this Agreement. This Agreement supersedes all other agreements and understandings (whether oral or written) made heretofore or contemporaneously herewith by the parties. The provisions of this Agreement may not be modified, altered or changed except by another written instrument executed by the parties hereto.
5. Upon the determination of compliance with the terms of this Agreement, a Release or a Partial Release of this Agreement, as applicable, shall be executed by the parties hereto and filed by the Developer with the Bureau of Conveyances, or with the Land Court of the State of Hawaii, as applicable.
6. Immediately upon termination, lapse, disapproval or revocation (as applicable) of Developer's plan, or tentative approval, this Agreement shall, without any further action on the part of any party hereto, terminate and be of no further force or effect.
7. Upon the written request of the Developer, the County may agree to subordinate its rights hereunder to the encumbrance of any mortgages and security agreements to any bank or lender for the site for the purpose of completing construction of the affordable housing lots. If the County consents to such subordination (which consent shall not be unreasonably withheld), it shall execute any further documentation or subordination agreement necessary to carry out the provisions of such subordination.

8. In accordance with Executive Order 142 issued on February 11, 2005 by the Mayor of the County, during the performance of this Agreement, Developer hereby agrees as follows:
- a. Developer shall comply with all requirements set forth in Federal and State laws and regulations relative to Title VI of the Civil Rights Act of 1964, as amended, which provide for non-discrimination in Federally assisted programs.
  - b. Developer shall not discriminate against any employee or applicant for employment because of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. The contractor shall assure that applicants are employed and that employees are treated during employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
  - c. Developer shall in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants shall receive consideration for employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law.
  - d. In the event of Developer's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled or suspended in whole or in part and the contractor may be declared ineligible for further County contracts until such time that the contractor by satisfactory evidence, in good faith, ceases such discriminatory practices or procedures.
  - e. Developer who subcontracts any portion of the contract shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with the County to be terminated or suspended pursuant to subsection (d) above.

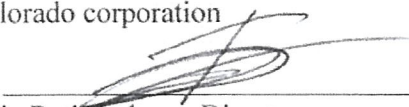
- f. Developer may direct any bidder, prospective contractor, or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law, and that the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions stated herein.
9. This instrument may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all of the signatories had executed a single signature page. Any unexecuted duplicate pages may be omitted from the assembled original document.
10. The parties agree that no party shall be deemed to be the drafter of this Agreement, and further that in the event this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provisions of this Agreement against any party as the drafter of this Agreement.
11. This Agreement shall be governed and construed in accordance with the laws of the State of Hawai'i.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]


IN WITNESS WHEREOF, the parties have executed these presents on the date and year first above-written.

**"DEVELOPER":**

Waikoloa Highlands Inc.  
A Colorado corporation


By:   
Natalia Batičtcheva, Director  
Date: 11-18-16

**RECOMMEND APPROVAL:**

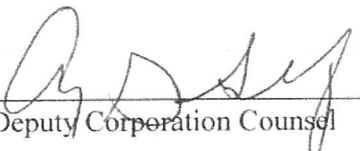
  
Susan K. Akiyama  
Housing Administrator  
Date: 11/22/16

**"COUNTY":**

COUNTY OF HAWAII

By:   
Name: WILLIAM P. KENOI  
Title: MAYOR  
Date: DEC 1 - 2016

**APPROVED AS TO FORM  
AND LEGALITY:**

By:   
Deputy Corporation Counsel  
Date: NOV 30 2016

On this 18<sup>th</sup> day of Nov., 2016, before me personally appeared, Natalia Batichtcheva, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

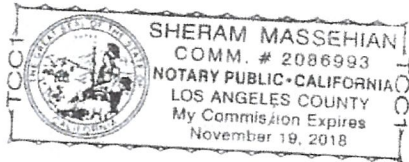
[Handwritten Signature]

(Signature)

Name: Sheram Massehian

Notary Public, State of California

My commission expires: \_\_\_\_\_

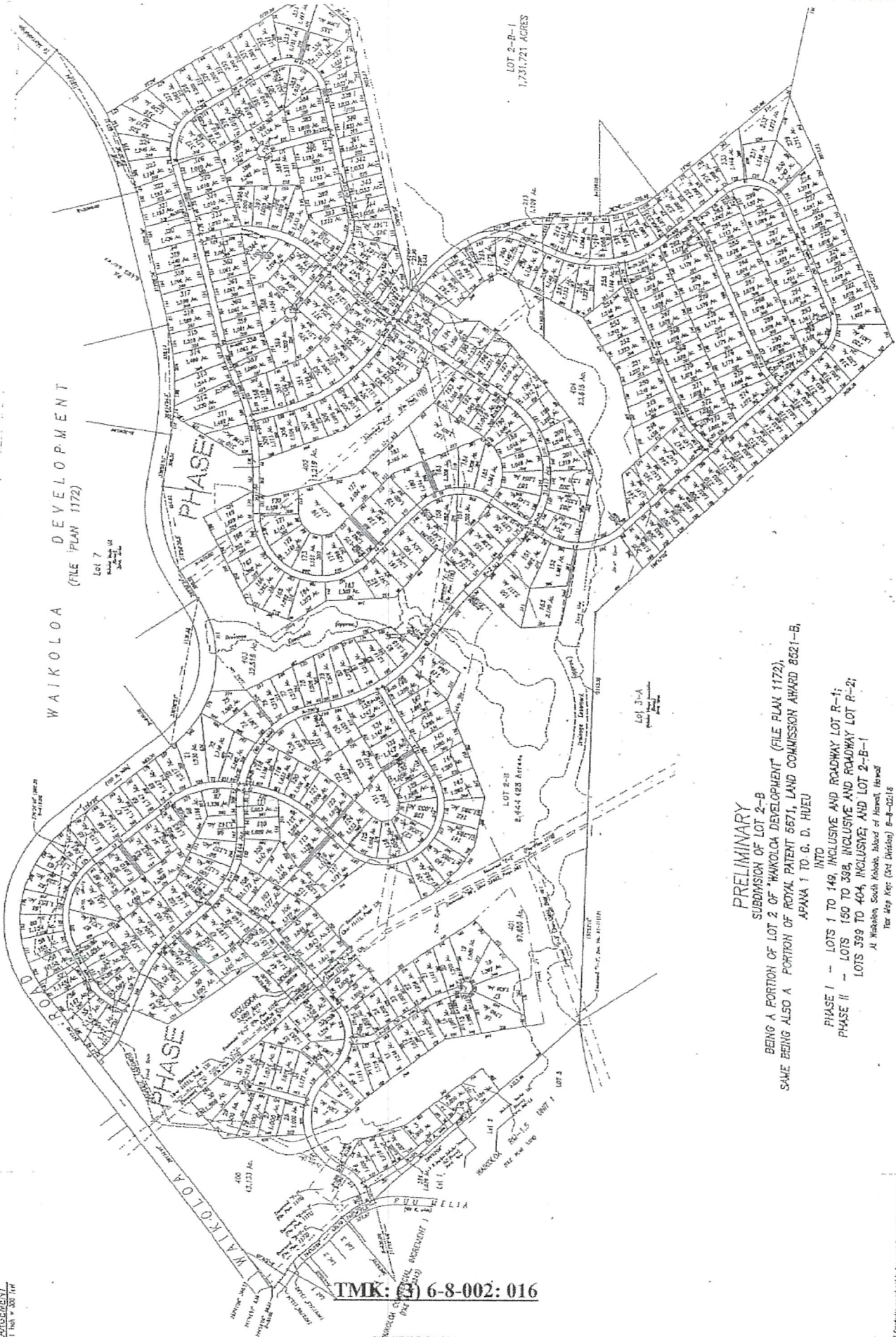


**EXHIBIT A**

**MAP OF DEVELOPMENT AREA**



ENLARGEMENT  
Scale 1 inch = 200 feet



WAIKOLOA DEVELOPMENT  
(FILE PLAN 1172)

LOT 2-B-1  
1,731,721 ACRES

**PRELIMINARY**  
 SUBDIVISION OF LOT 2-B  
 BEING A PORTION OF LOT 2 OF "WAIKOLOA DEVELOPMENT" (FILE PLAN 1172).  
 SAME BEING ALSO A PORTION OF ROYAL PATENT 5671, LAND COMMISSION AWARD 8631-B,  
 APPAX 1 TO G. D. HUEU

INTO  
 PHASE I - LOTS 1 TO 149, INCLUSIVE AND ROADWAY LOT R-1;  
 PHASE II - LOTS 150 TO 398, INCLUSIVE AND ROADWAY LOT R-2;  
 LOTS 399 TO 404, INCLUSIVE AND LOT 2-B-1

J. Waikoloa, South Kohala, Island of Hawaii, Hawaii  
 Tax Map Key: (Caf Division) 6-8-0216

TMK: (3) 6-8-002: 016

**EXHIBIT A**

Owner: WTKL Corporation  
 Address: 120 Arroyo Cist Lane

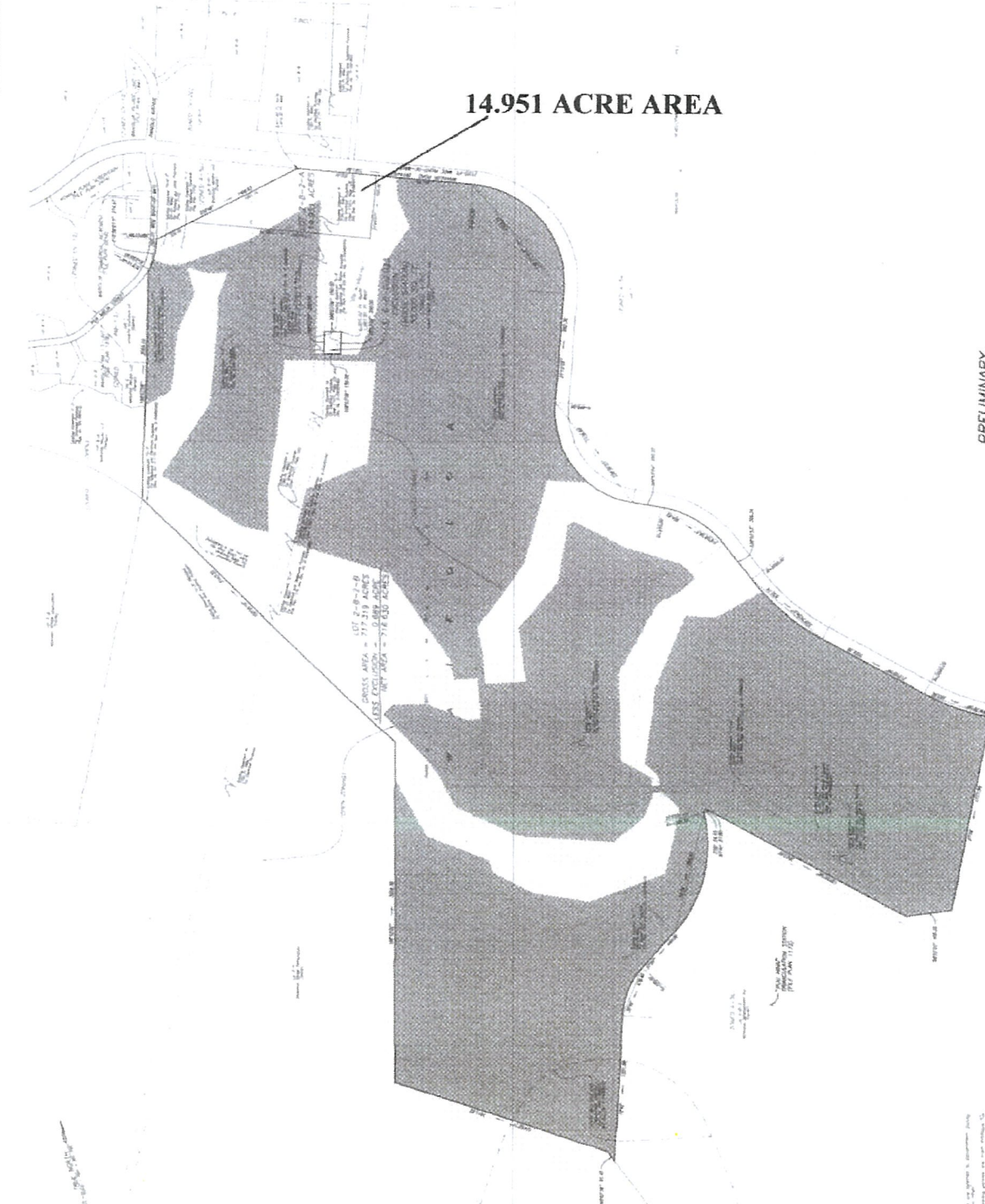
Map  
 The Waikoloa  
 J. Waikoloa, South Kohala, Island of Hawaii, Hawaii  
 Tax Map Key: (Caf Division) 6-8-0216

**EXHIBITS B & C**

**MAPS OF 14.951 ACRE AREA**



14.951 ACRE AREA



NOTES

1. All areas shown on this map are unimproved.
2. The proposed subdivision is shown on this map.
3. The proposed subdivision is shown on this map.
4. The proposed subdivision is shown on this map.
5. The proposed subdivision is shown on this map.
6. The proposed subdivision is shown on this map.
7. The proposed subdivision is shown on this map.
8. The proposed subdivision is shown on this map.
9. The proposed subdivision is shown on this map.
10. The proposed subdivision is shown on this map.

**PRELIMINARY**

MAP SHOWING  
SUBDIVISION OF LOT 2-B-2

Being a Portion of R.P. 5671, L.C. No. 8621-B, Ap. 1 to G. D. Hueu

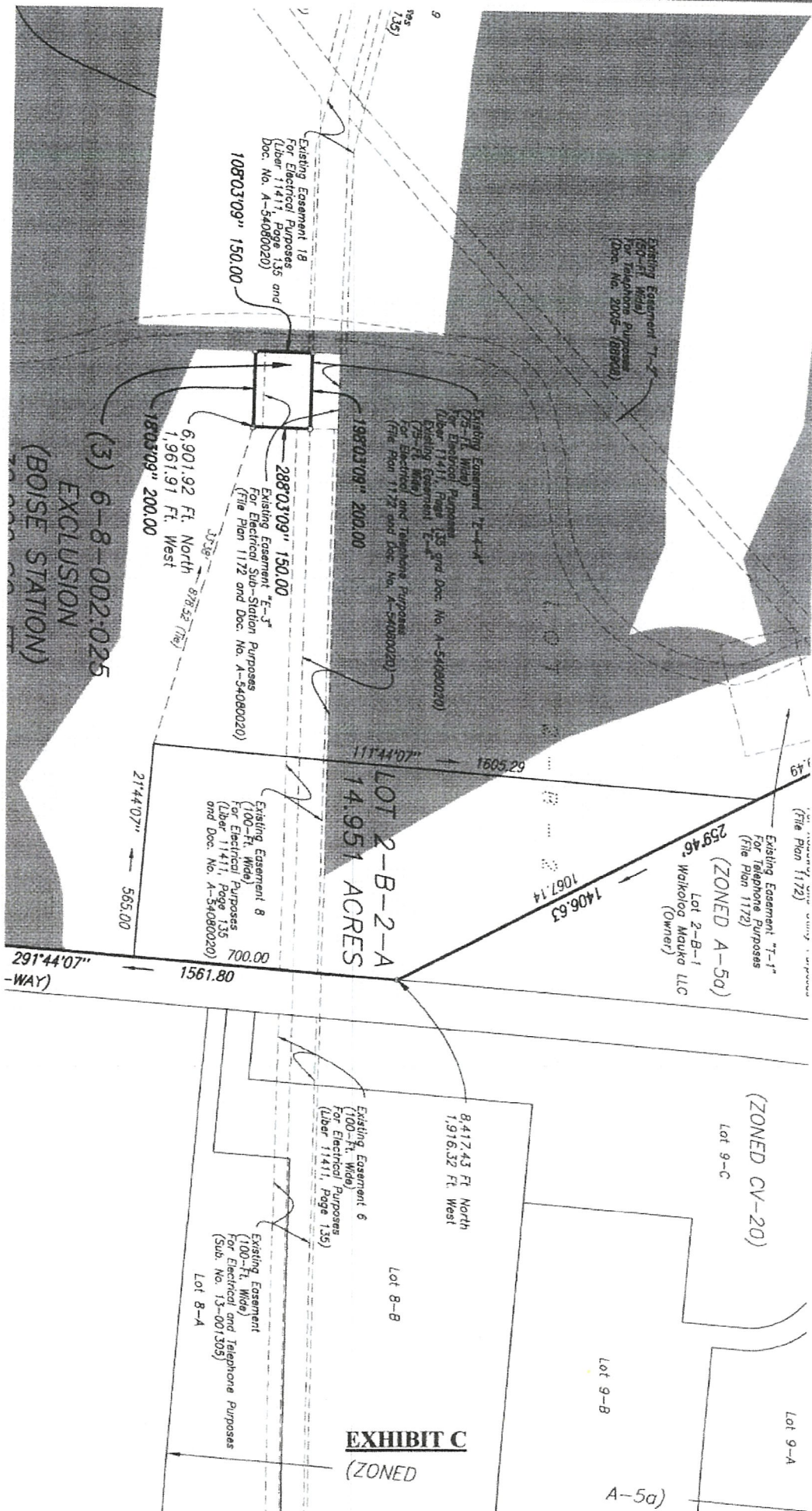
INTO LOT 2-B-2-A AND LOT 2-B-2-B

At Waikaloa, South Kohala  
Island and County of Hawaii, State of Hawaii



Surveyor's Name and License Information

Scale and Date



(3) 6-8-002-025  
EXCLUSION  
(BOISE STATION)

LOT 2-B-2-A  
14.951 ACRES

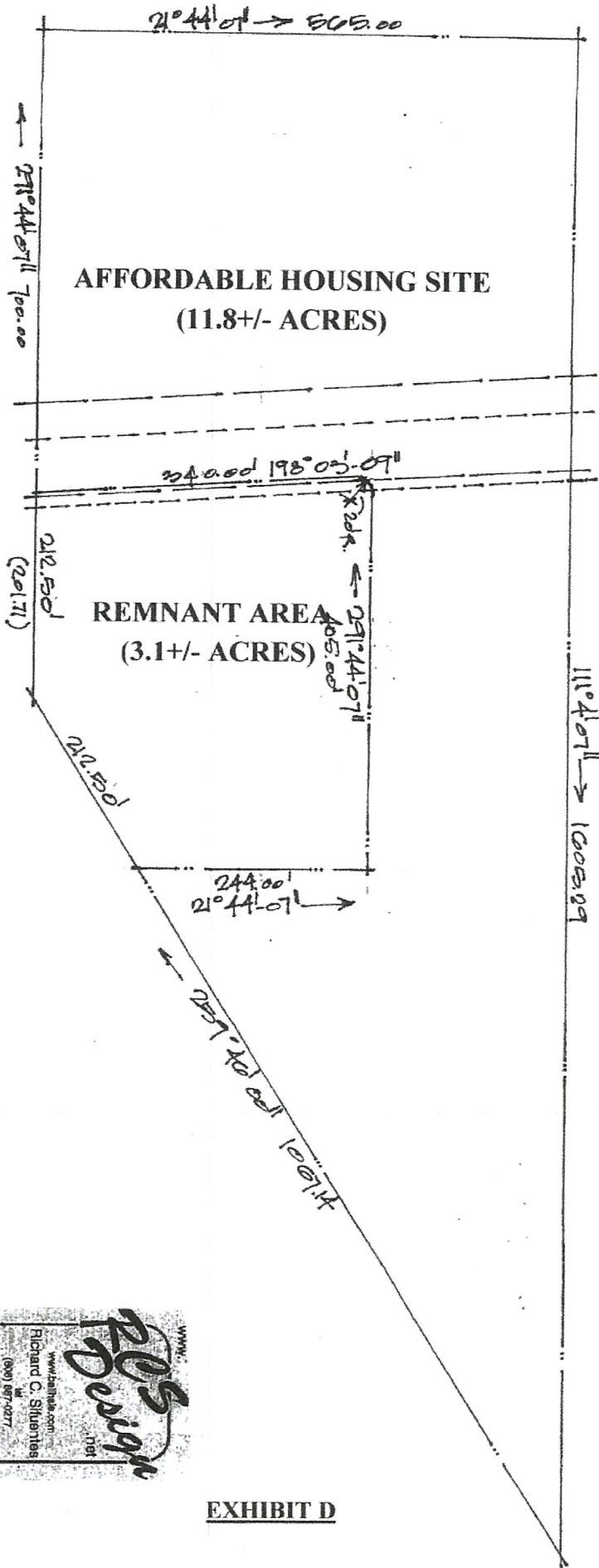
Existing Easement "T-1"  
For Telephone Purposes  
(File Plan 1172)  
Lot 2-B-1  
(ZONED A-50)  
Wahkong Mautka  
(Owner)

(ZONED CV-20)

**EXHIBIT C**  
(ZONED

**EXHIBIT D**

**MAP OF AFFORDABLE HOUSING SITE**



WALTERS ROAD

PRELIMINARY WELLS VILLAGE SUBDIVISION

www.fairhills.com  
 Richard C. Stuenkel  
 (800) 897-0277  
 (800) 894-4388  
 (800) 897-0200  
 not to be used for  
 any other purpose  
 Kentucky, Patent # 6,807,445

**EXHIBIT D**



SidneyFuke, Planning Consultant

100 Pauahi Street, Suite 212 • Hilo, Hawaii 96720  
Telephone: (808) 969-1522 • Cell: (808) 989-0640  
E-mail: sidfuke@hawaiiintel.net

• Planning • Variance • Zoning  
• Subdivision • Land Use Permits  
• Environmental Reports

March 28, 2017

Mr. Michael Yee, Director  
Planning Department  
COUNTY OF HAWAII  
101 Pauahi Street  
Hilo, HI 96720

2017 MAR 28 09:11:23  
PLANNING DEPARTMENT

Dear Mr. Yee:

**Subject: Subdivision Application – Waikoloa Highlands, Inc.  
Waikoloa, South Kohala, HI, TMK: 6-8-002:016**

Please find enclosed ten (10) copies of a proposed three (3) lot subdivision. The primary reason for this is to enable the conveyance 11.707 acre area to the County for the development of an affordable housing project. I am attaching a copy of the Affordable Housing Agreement, dated December 1, 2016, between the landowner and the County on this matter. The proposed 3.244 acre lot is intended to be conveyed to another entity that will indirectly support the housing project; and the remaining lot is the large “remnant”.

As you review this, please note – and as discussed with Mr. Jonathan Homes of your staff - that the subject property already has been granted tentative subdivision approval (SUB 89-000179). As such, we respectfully request that that subdivision be held in abeyance pending the consummation of the subject application. Upon receipt of final approval of the subject application, a revised subdivision map for the balance of the property will be submitted for your review and issuance of a revised tentative subdivision approval.

In addition to the proposed subdivision maps, enclosed are five (5) copies of the application form and the filing fee of \$300.00

Should you have questions on this matter, please feel free to direct them to me. Thank you very much.

Sincerely,  
  
SIDNEY M. FUKU  
Planning Consultant

Enclosures – agreement/maps/filing fee  
Copy – Waikoloa Highlands, Inc. w/ enclosures

110616

Exhibit H

# RECEIPT

DATE 3-28-17 No. 06182

RECEIVED FROM Sidney Fuke Planning Consultant \$ 300.00

100 Pauahi St. Suite 212 Hilo, HI 96720 DOLLAR

FOR RENT FOR SUB F/F TMK # G-8-002-016-0000

ACCOUNT		CASH	<input type="radio"/>
PAYMENT	<u>300.00</u>	CHECK	<input checked="" type="radio"/>
BAL DUE		MONEY ORDER	<input type="radio"/>
		CREDIT CARD	<input type="radio"/>

13378

BY [Signature]

**SIDNEY FUKU  
PLANNING CONSULTANT**  
PH. 808-969-1522  
100 PAUAHI ST STE 212  
HILO, HI 96720

13378

58 157/121  
6545

DATE March 28, 2017

PAY TO THE ORDER OF

County Director of Finance

\$ 300.00

Three hundred and no/100

DOLLARS



**CENTRAL PACIFIC BANK**  
P.O. Box 3590, Honolulu, Hawaii 96811  
808-544-0500 Oahu - 800-942-8422 Toll Free  
centralpacificbank.com

[Signature]

FOR Sub Filing fee - TMK: 6-8-2:16

⑈0133378⑈ ⑆21301578⑆ 201702002 4⑈



SUBDIVISION AND/OR CONSOLIDATION APPLICATION  
COUNTY OF HAWAII  
PLANNING DEPARTMENT

2017 MAR 29 PM 1:23

SUBDIVIDER: Waikoloa Highlands, Inc.

SUBDIVIDER'S SIGNATURE:  DATE: March 22, 2017

ADDRESS: 401 N. Brand, Suite 726 Glendale, CA 91203

TELEPHONE NO.: (818) 441-6569

SUBDIVIDER'S INTEREST, if not recorded owner: \_\_\_\_\_

RECORDED OWNER: Waikoloa Highlands, Inc.

OWNER'S SIGNATURE: \_\_\_\_\_ DATE: March 22, 2017

ADDRESS: 401 N. Brand, Suite 726 Glendale, CA 91023

TELEPHONE NO.: (818) 441-6569

ENGINEER/SURVEYOR: Wes Thomas Associates

ADDRESS: 75-5749 Kalawa Street Kailua-Kona, HI 96740

TELEPHONE NO.: 329-2353

DESCRIPTION OF SUBDIVISION: Proposed 3 lot subdivision

TAX MAP KEY: 6-8-002: 016 NO. OF LOTS: 3

AVERAGE SIZE LOTS: 3.2 acres; 11.7 acres; 716+ acres TOTAL ACRES: 731.581 acres

ZONING: RA-1a and Open

THIS APPLICATION MUST BE ACCOMPANIED BY:

- 1) **10 copies of the preliminary map** drawn to scale and prepared in accordance with Article 4, Divisions 1 and 2, Chapter 23, Subdivision Control Code of the County of Hawaii. This also includes a vicinity map. The Planning Director requests an additional copy of the Final Plat be submitted as a ".dwg" or ".dxf" file prepared by CAD software.
- 2) Filing fee based on \$250.00 plus \$25.00 per lot resulting from the subdivision and/or consolidation action, exclusive of roadway or easement parcels, by check payable to the County Director of Finance.
- 3) Original and 5 copies of the letter of transmittal and completed application form.

**Domian, Jesse**

---

**From:** Holmes, Jonathan  
**Sent:** Tuesday, March 28, 2017 1:10 PM  
**To:** Domian, Jesse  
**Subject:** FW: Waikoloa Affordable Housing Subdivision  
**Attachments:** Scan1024.pdf

Jessie,

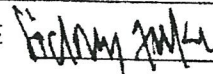
For attachment to the SUB appl Sid just brought in before lunch today

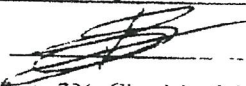
**From:** Sid Fuke [mailto:sidfuke@hawaiiantel.net]  
**Sent:** Tuesday, March 28, 2017 12:50 PM  
**To:** Holmes, Jonathan <Jonathan.Holmes@hawaiicounty.gov>  
**Cc:** 'Stefan Martirosian' <stefanmartirosian@gmail.com>; 'Natalia' <natalia@vitoilinc.com>  
**Subject:** Waikoloa Affordable Housing Subdivision

Hi Jonathan,

I dropped off the subject application this morning, which regrettably did not include the owner's signature (who is being copied this email), which is now attached. The original is being mailed but I will not be able to deliver it until after I return (4/15). Hopefully, the application process can be started without it. Many thanks!  
Sid

SUBDIVISION AND/OR CONSOLIDATION APPLICATION  
COUNTY OF HAWAII  
PLANNING DEPARTMENT

SUBDIVIDER Waikoloa Highlands, Inc  
SUBDIVIDER'S SIGNATURE  DATE March 22, 2017  
ADDRESS 401 N Brand, Suite 726 Glendale, CA 91203  
TELEPHONE NO (818) 441-6569  
SUBDIVIDER'S INTEREST, if not recorded owner \_\_\_\_\_

RECORDED OWNER Waikoloa Highlands, Inc  
OWNER'S SIGNATURE  DATE March 22, 2017  
ADDRESS 401 N Brand, Suite 726 Glendale, CA 91023  
TELEPHONE NO (818) 441-6569

ENGINEER/SURVEYOR Wes Thomas Associates  
ADDRESS 75-5749 Kalawa Street Kailua-Kona HI 96740  
TELEPHONE NO 329-2353

DESCRIPTION OF SUBDIVISION Proposed 3 lot subdivision  
TAX MAP KEY 6-8-002 016 NO OF LOTS 3  
AVERAGE SIZE LOTS 3.2 acres 11.7 acres 716. acres TOTAL ACRES 731.581 acres  
ZONING RA-1a and Open

THIS APPLICATION MUST BE ACCOMPANIED BY

- 1) **10 copies of the preliminary map** drawn to scale and prepared in accordance with Article 4, Divisions 1 and 2, Chapter 23, Subdivision Control Code of the County of Hawaii. This also includes a vicinity map. The Planning Director requests an additional copy of the Final Plat be submitted as a ".dwg" or ".dxf" file prepared by CAD software.
- 2) Filing fee based on \$250.00 plus \$25.00 per lot resulting from the subdivision and/or consolidation action, exclusive of roadway or easement parcels, by check payable to the County Director of Finance.
- 3) Original and 5 copies of the letter of transmittal and completed application form.

Harry Kim  
Mayor



Neil S. Gyotoku  
Housing Administrator

Lance M. Niimi  
Assistant Housing Administrator

**County of Hawai'i**  
**Office of Housing and Community Development**  
50 Wailuku Drive • Hilo, Hawai'i 96720 • (808) 961-8379 • Fax (808) 961-8685  
KONA: 74-5044 Ane Keohokalole Highway • Kailua-Kona, Hawai'i 96740  
(808) 323-4300 • Fax (808) 323-4301

December 07, 2016

**TRANSMITTAL**

TO: **Sidney M. Fuke**  
**Planning Consultant**  
**121 Waiānuenu Avenue, Suite 212**  
**Hilo, Hawai'i 96720**

FROM: **Neil S. Gyotoku**  
**Housing Administrator**

SUBJECT: **AFFORDABLE HOUSING AGREEMENT WAIKOLOA HIGHLANDS**

**WE ARE TRANSMITTING THE FOLLOWING FOR YOUR INFORMATION:**

<u>ORIG</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	12/1/2016	Affordable Housing Agreement

Should you have any questions, please contact Alan Rudo at 961-8379.

Thank you.

2017 JAN 20 09:11:33



EQUAL HOUSING OPPORTUNITY  
"HAWAII COUNTY IS AN EQUAL  
OPPORTUNITY PROVIDER AND  
EMPLOYER"

LAND COURT

REGULAR SYSTEM

Return By Mail  Pick-Up To:

Sidney M. Fuke, Planning Consultant  
100 Pauahi Street, Suite 212  
Hilo, Hawai'i 96720

TITLE OF DOCUMENT:

AFFORDABLE HOUSING AGREEMENT

DEVELOPER: Waikoloa Highlands, Inc, a Colorado corporation, whose principal place of business and mailing address is: 401 N. Brand Blvd. Suite 726, Glendale, CA 91203

COUNTY: COUNTY OF HAWAII, a municipal corporation of the State of Hawaii, whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawaii 96720

TAX MAP KEY(S): (3) 6-8-002:016

(This document consists of 8 pages.)

## AGREEMENT

This Agreement is made and effective this 1<sup>st</sup> day of Dec., 2016 by and between **Waikoloa Highlands, Inc.**, a Colorado corporation, hereinafter referred to as "Developer", whose principal place of business and mailing address is 4316 Marina City Drive, Suite G101, Marina Del Rey, CA 90292, and the **COUNTY OF HAWAII**, a municipal corporation of the State of Hawaii, hereinafter referred to as "County", whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawaii 96720.

WHEREAS, the Developer proposes to develop the Highlands project consisting of 731.579-acres of real property located at TMK: (3) 6-8-002:016 and further depicted on **Exhibit A** hereto into 386 +/- residential-agricultural lots herein referred to the "Development Site"; and

WHEREAS, Chapter 11, Article 1 of the Hawaii County Code, relating to Affordable Housing Policy, authorizes the Mayor, the Office of Housing and Community Development (the "OHCD") or their duly authorized representative to enter into this Agreement with the Developer; and

WHEREAS, on March 13, 2003, County of Hawai'i Change of Zone Ordinance No. 13-29 became effective, amended Ordinance No. 07-127, which amended Ordinance No. 05-157, which amended Ordinance No. 95-51, which amended Ordinance No. 90-16, which reclassified lands from Agricultural 5-Acre (A5a) (Formerly Unplanned) and Multiple Family Residential - 1,500 Square Feet (RM-15.) to Residential - Agricultural 1 Acre (RA-1a) and Open (O), subject to Condition "E", which provides for the development of affordable housing lots as follows:

...To ensure that the goals and policies of the Housing Element of the General Plan are implemented, the applicant shall comply with the requirements of Chapter 11, Article 1, Hawai'i County Code relating to Affordable Housing Policy. This requirement shall be approved by the Administrator of the Office of Housing and Community Development prior to final subdivision approval;

WHEREAS, the parties hereto have evaluated the various options available for development of the Affordable Housing Site to satisfy the affordable housing goals and policies of the State of Hawaii and County of Hawai'i; and

NOW, THEREFORE, in consideration of the mutual covenants in this Agreement, and pursuant to Chapter 11, Article 1 (Affordable Housing) of the Hawai'i County Code ("Chapter 11"), the parties hereby agree as follows:

1. In consideration of the mutual covenants in this Agreement, and pursuant to Chapter 11, Article 1 (Affordable Housing) of the Hawai'i County Code ("Chapter 11"), the parties hereby agree that upon compliance with the terms of the Agreement, the Developer shall have satisfied the requirements of Condition "E" of Ordinance No. 13-29.
2. The Developer shall subdivide and convey to Plumeria At Waikoloa LLC, a Hawai'i non-profit corporation, approximately 11.8+/- acres of land within a 14.951 acre area of the Development Site as depicted on **Exhibits B and C** hereto

and identified as Affordable Housing Site on **Exhibit D** hereto within 180 days of execution of this agreement.

3. If the efforts of the Developer to convey the Affordable Housing Site are delayed by any of the following (collectively, "Force Majeure"): (a) war, earthquake, fire, flood, volcanic activity or other similar natural disaster, or by general or industry-wide strike in the County of Hawaii, shipping strike in the State of Hawaii or on the continental United States, or (b) the failure of any Government Agencies to approve or consent to any matter for which such approval or consent is required within a reasonable time after the Developer has made a request therefor despite reasonable efforts on the part of the Developer to obtain such consent or approval, then, and in any such event, the time periods set forth in this Agreement for conveyance of the Affordable Housing Site shall be extended by the number of days that the Developer is delayed as a result of the specified event of Force Majeure.
4. This Agreement shall run with the land and be binding upon and inure to the benefit of the parties hereto, and their respective successors and assigns. This Agreement shall be recorded against the land by the Developer at the Bureau of Conveyances or with the Land Court of the State of Hawaii as applicable, within thirty days after being fully executed by the parties. The parties agree to take such actions and execute whatever other documents as are necessary to effectuate and carry out the intent of this Agreement. This Agreement supersedes all other agreements and understandings (whether oral or written) made heretofore or contemporaneously herewith by the parties. The provisions of this Agreement may not be modified, altered or changed except by another written instrument executed by the parties hereto.
5. Upon the determination of compliance with the terms of this Agreement, a Release or a Partial Release of this Agreement, as applicable, shall be executed by the parties hereto and filed by the Developer with the Bureau of Conveyances, or with the Land Court of the State of Hawaii, as applicable.
6. Immediately upon termination, lapse, disapproval or revocation (as applicable) of Developer's plan, or tentative approval, this Agreement shall, without any further action on the part of any party hereto, terminate and be of no further force or effect.
7. Upon the written request of the Developer, the County may agree to subordinate its rights hereunder to the encumbrance of any mortgages and security agreements to any bank or lender for the site for the purpose of completing construction of the affordable housing lots. If the County consents to such subordination (which consent shall not be unreasonably withheld), it shall execute any further documentation or subordination agreement necessary to carry out the provisions of such subordination.

8. In accordance with Executive Order 142 issued on February 11, 2005 by the Mayor of the County, during the performance of this Agreement, Developer hereby agrees as follows:
  - a. Developer shall comply with all requirements set forth in Federal and State laws and regulations relative to Title VI of the Civil Rights Act of 1964, as amended, which provide for non-discrimination in Federally assisted programs.
  - b. Developer shall not discriminate against any employee or applicant for employment because of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. The contractor shall assure that applicants are employed and that employees are treated during employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training. The contractor agrees to post in conspicuous places notices to be provided by the contracting officer setting forth the provisions of the nondiscrimination clause.
  - c. Developer shall in all solicitations or advertisements for employees placed by or on behalf of Developer, state that all qualified applicants shall receive consideration for employment without regard to race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law.
  - d. In the event of Developer's noncompliance with the nondiscrimination clauses of this contract, this contract may be canceled or suspended in whole or in part and the contractor may be declared ineligible for further County contracts until such time that the contractor by satisfactory evidence, in good faith, ceases such discriminatory practices or procedures.
  - e. Developer who subcontracts any portion of the contract shall assure the County that such subcontractor shall abide by the nondiscrimination provisions stated herein and agrees that any subcontractor who is found in violation of such provisions shall subject the principal contractor's contract with the County to be terminated or suspended pursuant to subsection (d) above.



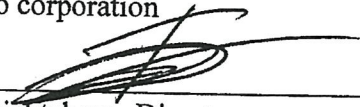
- f. Developer may direct any bidder, prospective contractor, or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of race, ancestry/national origin, religion, color, disability, age, marital status, military status, veteran's status, sexual orientation, lactation, arrest and court record, citizenship, or any other classification protected by state or federal law, and that the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions stated herein.
9. This instrument may be executed in two or more counterparts, and when all counterparts have been executed, each counterpart shall be considered an original but when assembled shall constitute one and the same instrument, and shall have the same force and effect as though all of the signatories had executed a single signature page. Any unexecuted duplicate pages may be omitted from the assembled original document.
10. The parties agree that no party shall be deemed to be the drafter of this Agreement, and further that in the event this Agreement is ever construed by a court of law, such court shall not construe this Agreement or any provisions of this Agreement against any party as the drafter of this Agreement.
11. This Agreement shall be governed and construed in accordance with the laws of the State of Hawai'i.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]


IN WITNESS WHEREOF, the parties have executed these presents on the date and year first above-written.

**"DEVELOPER":**

Waikoloa Highlands Inc.  
A Colorado corporation


By:   
Natalia Batichtcheva, Director  
Date: 11-18-16

**RECOMMEND APPROVAL:**

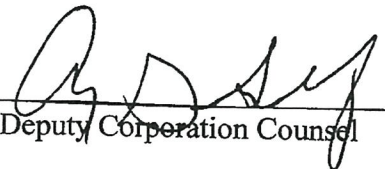
  
Susan K. Akiyama  
Housing Administrator  
Date: 11/22/16

**"COUNTY":**

COUNTY OF HAWAII

By:   
Name: WILLIAM P. KENOI  
Title: MAYOR  
Date: DEC 1 - 2016

**APPROVED AS TO FORM  
AND LEGALITY:**

By:   
Deputy Corporation Counsel  
Date: NOV 30 2016

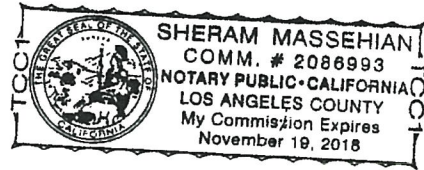
On this 18<sup>th</sup> day of Nov., 2016, before me personally appeared, Natalia Batichtcheva, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

  
\_\_\_\_\_  
(Signature)

Name: Sheram Mashehian

Notary Public, State of California

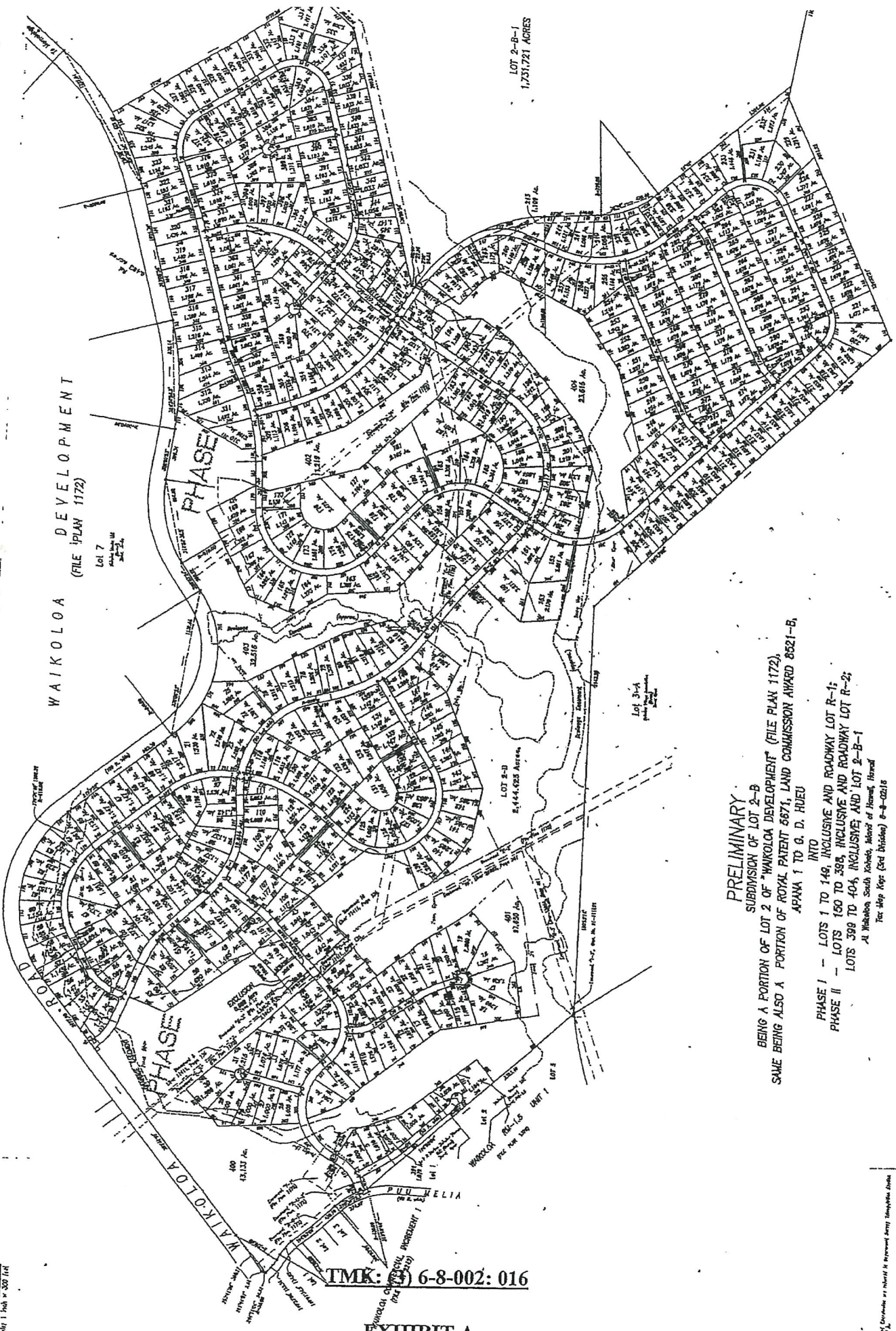
My commission expires: \_\_\_\_\_



**EXHIBIT A**

**MAP OF DEVELOPMENT AREA**

ENLARGEMENT  
Scale 1 inch = 300 feet



WAIKOLOA DEVELOPMENT  
(FILE PLAN 1172)

Lot 7  
43,137 Ac.

LOT 2-B-1  
1,231,721 ACRES

Lot 3-A  
33,616 Ac.

LOT 2-B-3  
5,444,628 ACRES

TMK: (S) 6-8-002: 016

EXHIBIT A

PRELIMINARY  
SUBMISSION OF LOT 2-B  
BEING A PORTION OF LOT 2 OF "WAIKOLOA DEVELOPMENT" (FILE PLAN 1172),  
SAME BEING ALSO A PORTION OF ROYAL PATENT 5871, LAND COMMISSION AWARD 8521-B,  
APANA 1 TO G. D. HUEI

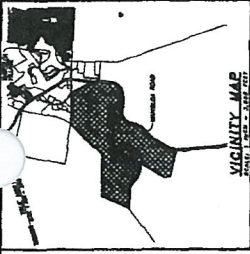
PHASE I -- LOTS 1 TO 146, INCLUSIVE AND ROADWAY LOT R-1;  
PHASE II -- LOTS 150 TO 395, INCLUSIVE AND ROADWAY LOT R-2;  
LOTS 399 TO 404, INCLUSIVE AND LOT 2-B-1  
At Waikoloa, South Kohala, Island of Hawaii, Hawaii  
See Map Key (See Back) 6-8-002/16

Owner: WTKL Corporation  
Address: 120 Aiea Dr. Iiwa

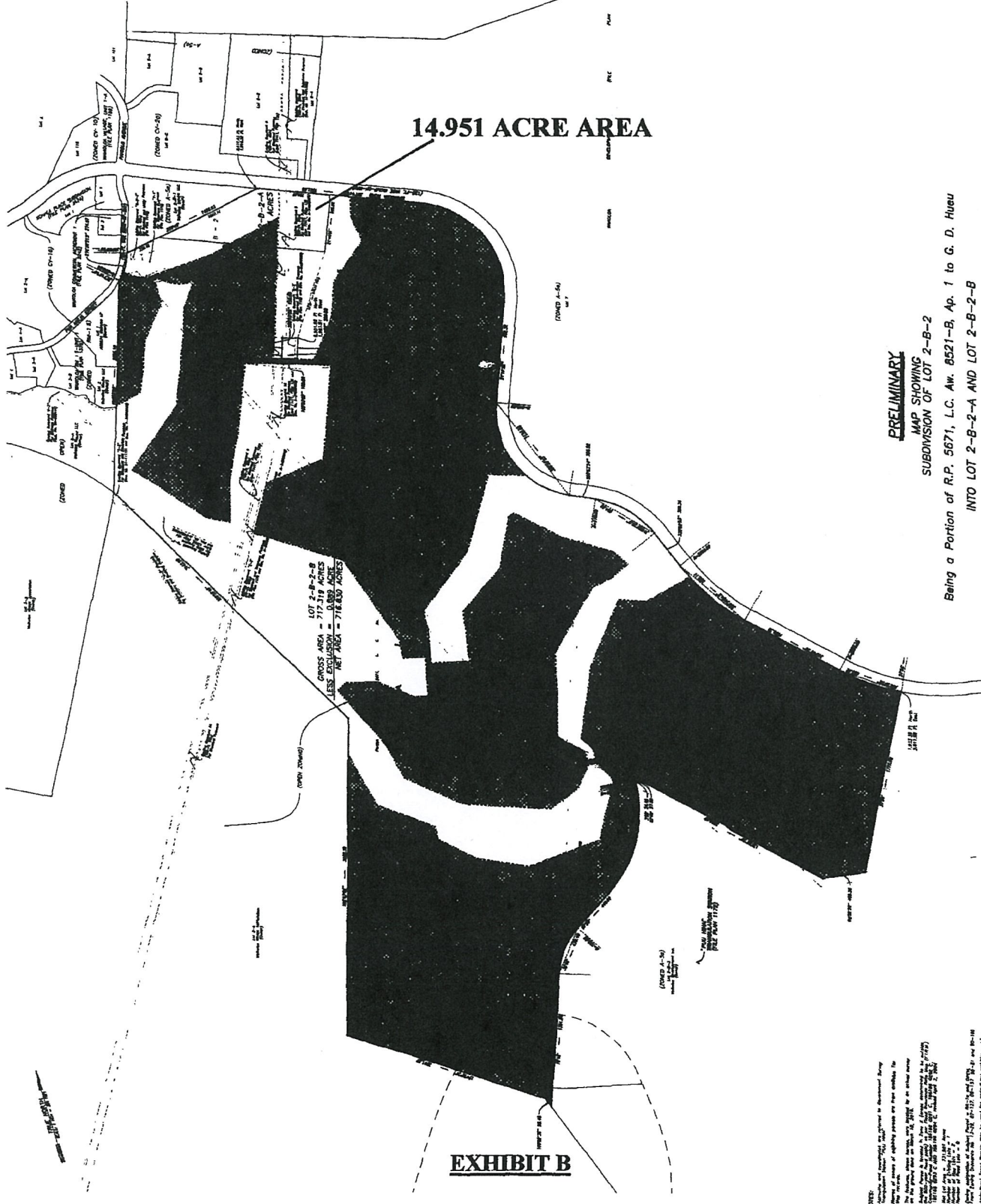
Map prepared by  
Engineering Division of Hawaii Department of Public Works  
Date: 10/1/68

**EXHIBITS B & C**

**MAPS OF 14.951 ACRE AREA**



# 14.951 ACRE AREA



## EXHIBIT B

**PRELIMINARY**  
**MAP SHOWING**  
**SUBDIVISION OF LOT 2-B-2**  
 Being a Portion of R.P. 5671, L.C. No. 8521-B, Ap. 1 to G. D. Huelo  
 INTO LOT 2-B-2-A AND LOT 2-B-2-B  
 At Waikoloa, South Kohala  
 Island and County of Hawaii, State of Hawaii

NOTES:  
 1. The boundaries shown on this map are based on the original survey of the land shown on the map.  
 2. The area shown on this map is not to be construed as a warranty of title or any other interest in the land.  
 3. The area shown on this map is not to be construed as a warranty of title or any other interest in the land.  
 4. The area shown on this map is not to be construed as a warranty of title or any other interest in the land.  
 5. The area shown on this map is not to be construed as a warranty of title or any other interest in the land.  
 6. The area shown on this map is not to be construed as a warranty of title or any other interest in the land.  
 7. The area shown on this map is not to be construed as a warranty of title or any other interest in the land.  
 8. The area shown on this map is not to be construed as a warranty of title or any other interest in the land.  
 9. The area shown on this map is not to be construed as a warranty of title or any other interest in the land.  
 10. The area shown on this map is not to be construed as a warranty of title or any other interest in the land.



PROJECT NO. 1497 A, 2018  
 DATE OF SURVEY 12/15/18  
 SURVEYOR'S NAME: [Name]  
 LICENSE NO. [Number]



Prepared by:  
 [Name]  
 [Address]  
 [City, State, ZIP]

SCALE: AS SHOWN

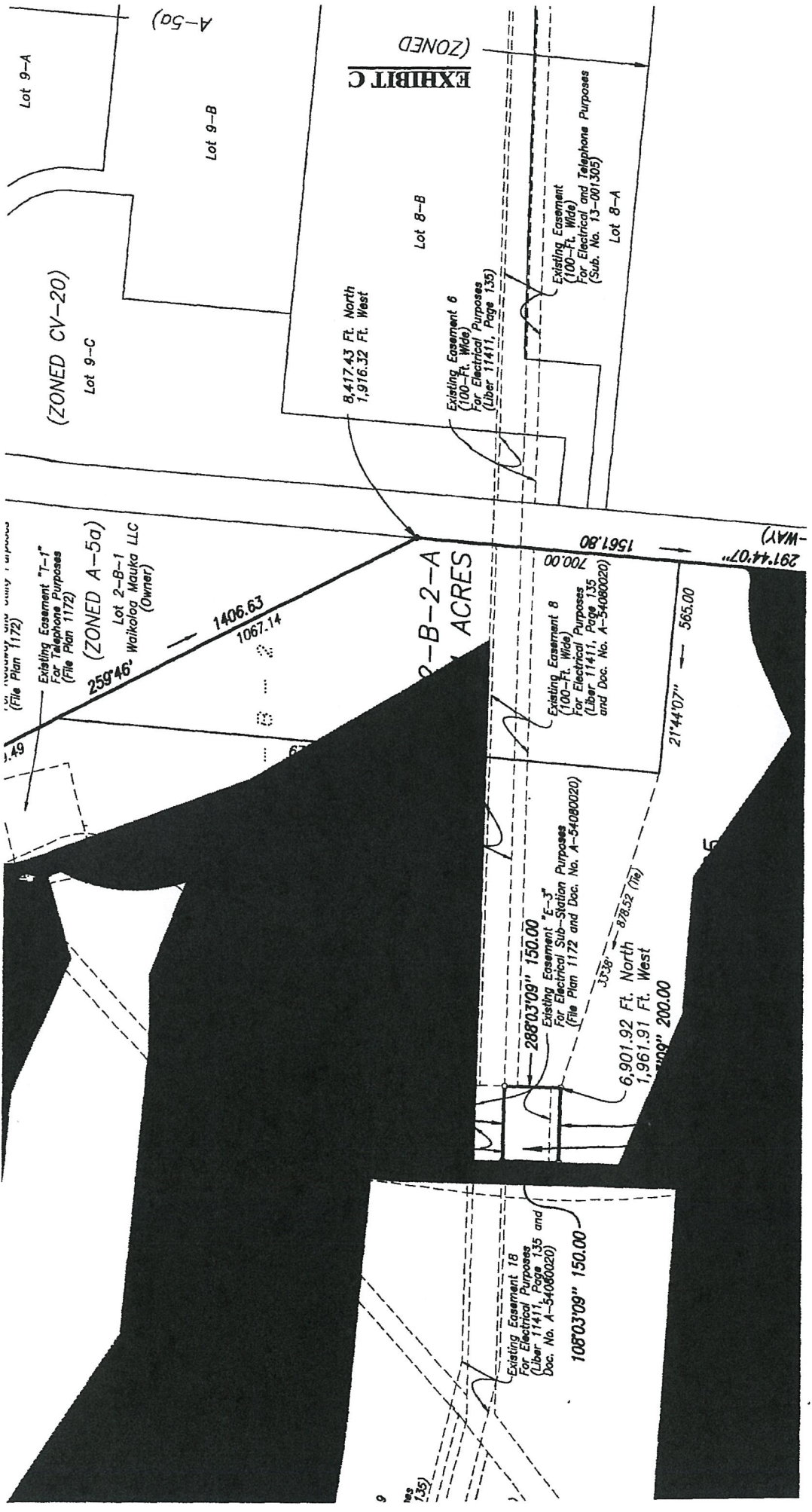


EXHIBIT C

(ZONED CV-20)

Lot 9-C

Lot 9-A

Lot 9-B

Lot 8-B

8,417.43 Ft. North  
1,916.32 Ft. West

Existing Easement 6  
(100-Ft. Wide)  
For Electrical Purposes  
(Liber 11411, Page 135)

Existing Easement  
(100-Ft. Wide)  
For Electrical and Telephone Purposes  
(Sub. No. 13-001305)

Lot 8-A

Existing Easement T-1  
For Telephone Purposes  
(File Plan 1172)

(ZONED A-5a)

Lot 2-B-1  
Waikoloa, Maui LLC  
(Owner)

1406.63

1067.14

259°46'

291°44'07" 1561.80

700.00

Existing Easement 8  
(100-Ft. Wide)  
For Electrical Purposes  
(Liber 11411, Page 135  
and Doc. No. A-54080020)

21°44'07" 565.00

Existing Easement E-3  
For Electrical Sub-Station Purposes  
(File Plan 1172 and Doc. No. A-54080020)

288°03'09" 150.00

6,901.92 Ft. North  
1,961.91 Ft. West

200.00

352.8' 878.52 (The)

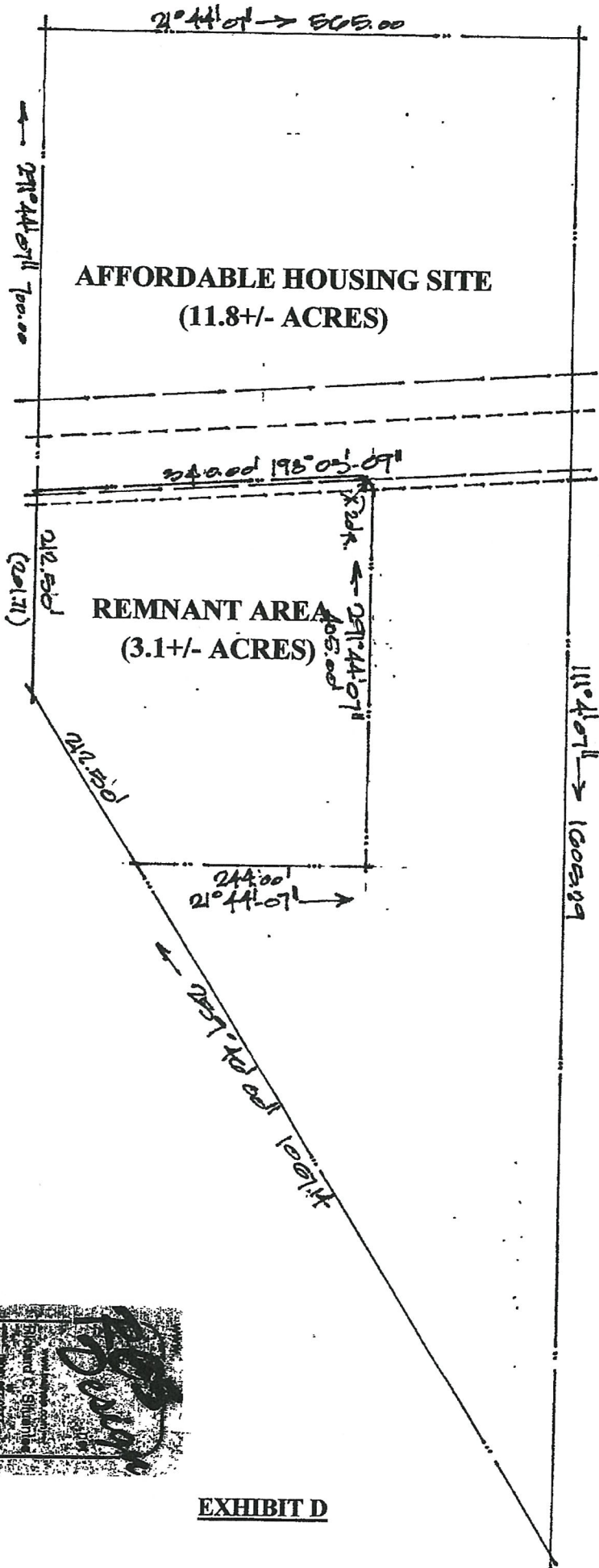
Existing Easement 18  
For Electrical Purposes  
(Liber 11411, Page 135 and  
Doc. No. A-54080020)

108°03'09" 150.00



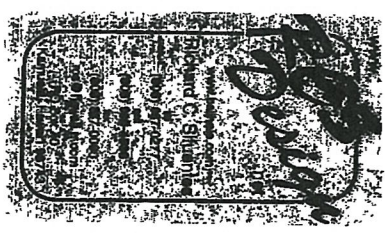
**EXHIBIT D**

**MAP OF AFFORDABLE HOUSING SITE**



WALKWAY ROAD

REMNANT R/W WELLS VILLAGE SUBDIVISION



**EXHIBIT D**

417  
7



STATE OF HAWAII  
BUREAU OF CONVEYANCES—  
RECORDED

January 29, 2018 10:45 AM

Doc No(s) A-66030880



1 1/1 KEO  
B-33115429

/s/ LESLIE T. KOBATA  
REGISTRAR

Conveyance Tax: \$82.50

LAND COURT SYSTEM

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL (X) PICK-UP ( )

Waikoloa Highlands, Inc.  
121 West Lexington Drive, Suite 726  
Glendale, CA 91203

THIS DOCUMENT CONTAINS 4 PAGES

TITLE OF DOCUMENT:

**WARRANTY DEED**

PARTY TO DOCUMENT:

**GRANTOR:** WAIKOLOA HIGHLANDS, INC., a Colorado Corporation,  
whose principal place of business address and mailing address is  
121 West Lexington Drive, Suite 726, Glendale, CA 91203

**GRANTEE:** PLUMERIA AT WAIKOLOA, LLC, a Hawai'i limited liability  
company, who principal place of business and mailing address is  
P.O. Box 5258, Hilo, HI 96720

PROPERTY DESCRIPTION:

Tax Map Key: (3) 6-8-002: 057

**WARRANTY DEED**

KNOW ALL MEN BY THESE PRESENTS:

That **WAIKOLOA HIGHLANDS, INC., a Colorado Corporation**, whose principal place of business and mailing address is 121 West Lexington Drive, Suite 726, Glendale, CA 91203, hereinafter called the "Grantor" for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to the Grantor paid by **PLUMERIA AT WAIKOLOA, LLC, a Hawai'i limited liability company**, whose principal place of business and mailing address is P.O. Box 5258, Hilo, HI 9720, hereinafter called the "Grantee", the receipt of whereof is hereby acknowledged, does hereby grant, bargain, sell and convey unto the Grantee all of those certain real property designated on the tax maps of the Third Taxation Division, State of Hawai'i, as Tax Map Key (3) 6-8-002: 057, more particularly described in Exhibit A attached hereto and made a part hereof.

TOGETHER WITH ALL and singular the buildings, improvements, rights, tenements, hereditaments, easements, privileges and appurtenances thereunto belonging or appertaining or held and enjoyed in connection therewith.

TO HAVE AND TO HOLD the same unto the Grantee, its successors and assigns, in fee simple forever.

AND THE SAID GRANTOR does hereby covenant with the Grantee that the Grantor is lawfully seized in fee simple of said granted premises and that the said premises are free and clear of all encumbrances except as aforesaid, and except for assignments for real property taxes not yet due. And the said Grantor further covenants and agrees that the

real property taxes not yet due. And the said Grantor further covenants and agrees that the Grantor has good right to sell and convey the said premises in the manner aforesaid; that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

IT IS MUTUALLY AGREED the the terms "Grantor" and "Grantee", as and when used hereinabove or hereinbelow shall mean and include the masculine or feminine, the singular or plural number, individuals, associations, trustees, corporations or partnerships, and their and each of their respective successors in interest, heirs, executors, personal representatives, administrators and permitted assigns, according to the context hereof, and that if these presents shall be signed by two or more grantors, or by two or more grantees, all covenants o f such parties shall be and for all propuses deemed to be their joint and several covenants.

The parties agree that this instrument may be executed in counterparts, each of which shall be deemed an original, and the counterparts shall together constitute one and the same instrument, binding all parties notwithstanding that all of the parties are not signatory to the same counterparts. For all purposes, including, without limitation, recordation, filing and delivery of this instrument, duplicate unexecuted and unacknowledged pages of the counterparts may be discarded and the remaining pages assembled as one document.

IN WITNESS WHEREOF, this instrument has been executed by the undersigned on this 1<sup>st</sup> day of June, 2017.

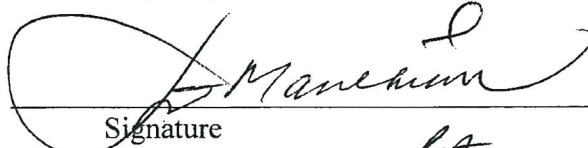
**WAIKOLOA HIGHLANDS, INC.**  
**a Colorado Corporation**

By: \_\_\_\_\_

Natalia Batichtcheva, Director

*State of California*

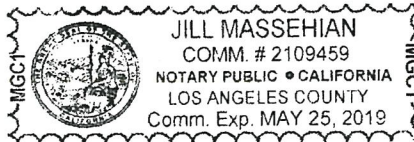
On this 1<sup>st</sup> day of June, 2017, before me personally appeared Natalia Batichtcheva, to me personally known who, being by me duly sworn, did say that she as the Director of Waikoloa Highlands, Inc., executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Signature

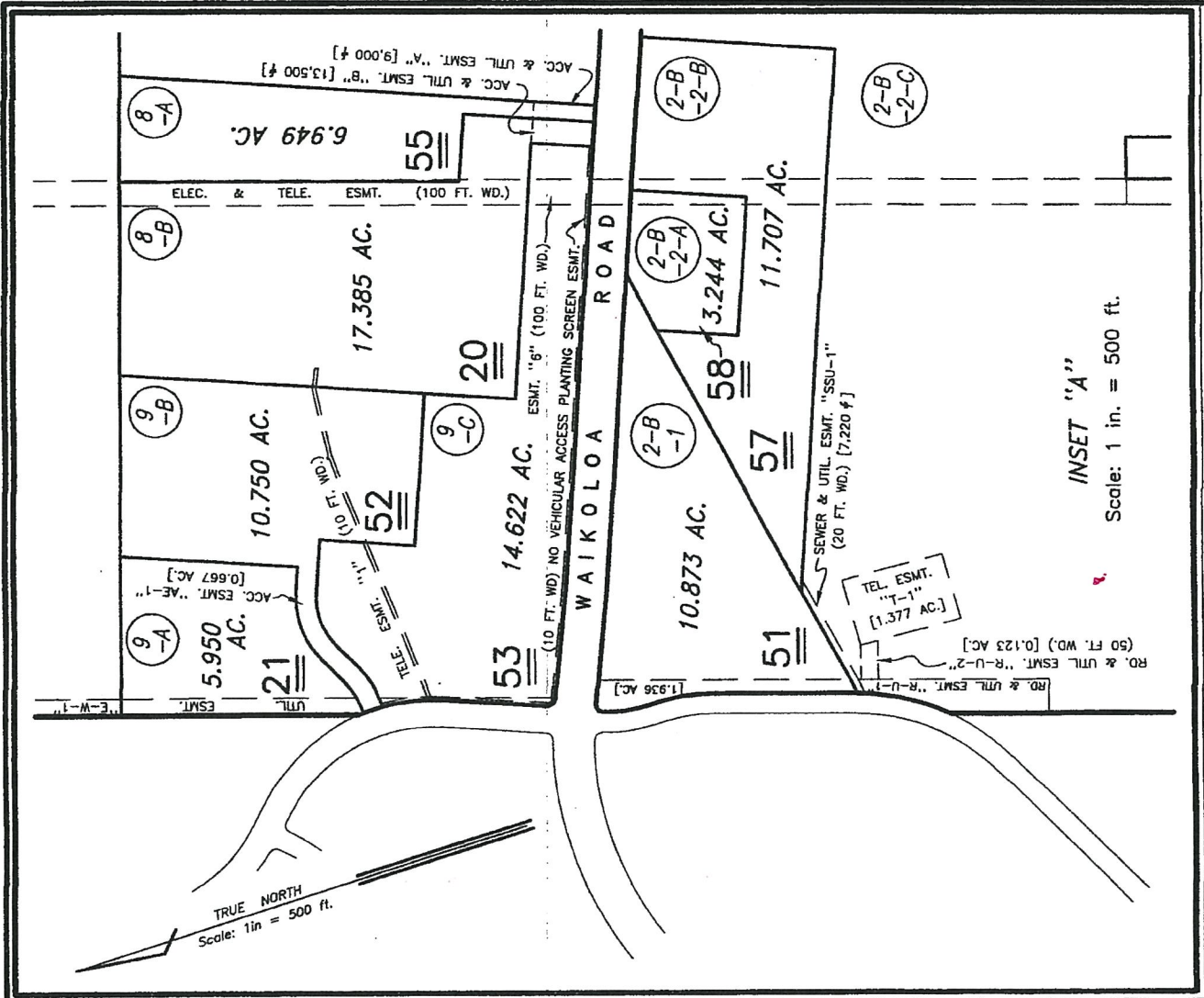
Notary Public, State of CA

My commission expires: 5/25/2019



3RD. DIST.

6 - 8



INSET "A"  
Scale: 1 in. = 500 ft.

**EXHIBIT A (TMK: (3) 6-8-002: 57**

LOT 2-B-2-B

Land situated on the Southerly side of Waikoloa Road at Waikoloa, South Kohala, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lot 2-B-2; and

Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu.

Beginning at the Northwesterly corner of this parcel of land, being also the Northeasterly corner of Lot 2-B-2-A of this subdivision and being a point on the Southerly side of Waikoloa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 8,326.80 feet North and 1,688.99 feet West and running by azimuths measured clockwise from True South:

- 1. 291° 44' 07"                      455.27 feet along the Southerly side of Waikoloa Road to a point;
- 2. 21° 44' 07"                      565.00 feet along Lot 2-B-2-C of this subdivision and along the remainders of Lot 2-B-2 and Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point;
- 3. 111° 44' 07"                      1,605.29 feet along Lot 2-B-2-C of this subdivision and along the remainders of Lot 2-B-2 and Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point;
- 4. 259° 46'                            854.64 feet along Lot 2-B-1 and along the remainder of Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point;



Thence, for the next four (4) courses following along Lot 2-B-2-A of this subdivision and along the remainders of Lot 2-B-2 and Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu:

- 5. 21° 44' 07" 244.00 feet to a point;
- 6. 291° 44' 07" 405.00 feet to a point;

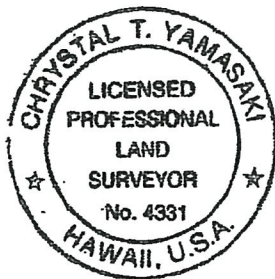
Thence, following on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

- 7. 246° 44' 07" 28.28 feet to a point;
- 8. 201° 44' 07" 336.51 feet to the point of beginning and containing an area of 11.707 Acres.

SUBJECT, HOWEVER, to a portion of Existing Easement 8 (100-Ft. Wide) for Electrical Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 11411 page 135 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-4" (75-Ft. Wide) for Electrical and Telephone Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. A-54080020 and as shown on File Plan 1172.

TOGETHER WITH, Easement "SSU-1" (20-Ft. Wide) for Sanitary Sewer and Utility Purposes over and across Lot 2-B-2-C and being more particularly described by the attached description.



WES THOMAS ASSOCIATES

*Chrystal Thomas Yamasaki*

Chrystal Thomas Yamasaki  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. LS-4331

75-5749 Kalawa Street  
Kailua-Kona, Hawaii 96740-1817  
TMK: 6-8-002: portion 016 (3rd Division)  
May 19, 2017

EASEMENT "SSU-1"  
 (20-FT. WIDE)  
 FOR SANITARY SEWER AND UTILITY PURPOSES  
 OVER AND ACROSS LOT 2-B-2-C  
IN FAVOR OF LOT 2-B-2-B

Land situated along the Northwesterly boundary of Lot 2-B-2-C and on the Easterly side of Pua Melia Street at Waikoloa, South Kohala, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lot 2-B-2-C; and

Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu.

Beginning at the Northwesterly corner of this easement, being also the Northwesterly corner of Lot 2-B-2-C and a point on the Easterly side of Pua Melia Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 8,167.53 feet North and 3,300.58 feet West and running by azimuths measured clockwise from

True South:

- |    |              |        |  |
|----|--------------|--------|--|
| 1. | 259° 46'     | 339.49 | feet along Lot 2-B-1 to a point;                       |
| 2. | 291° 44' 07" | 37.77  | feet along Lot 2-B-2-B of this subdivision to a point; |
| 3. | 79° 46'      | 382.77 | feet along the remainder of Lot 2-B-2-C to a point;    |

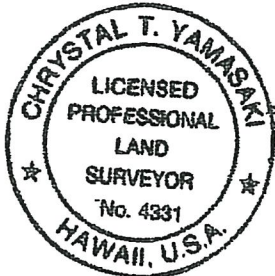
Thence, from a tangent azimuth of 200° 08' 20" following along the Easterly side of Pua Melia Street on a curve to the left with a radius of 630.00 feet, the chord azimuth and distance being:

4. 199° 05' 44.5"

22.94 feet to the point of beginning and containing an area of 7,220 Square Feet.

WES THOMAS ASSOCIATES

Chrystal Thomas Yamasaki  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. LS-4331



75-5749 Kalawa Street  
Kailua-Kona, Hawaii 96740-1817  
TMK: 6-8-002: portion 016 (3rd Division)  
May 19, 2017

EASEMENT "SSU-1"  
 (20-FT. WIDE)  
 FOR SANITARY SEWER AND UTILITY PURPOSES  
 OVER AND ACROSS LOT 2-B-2-C  
IN FAVOR OF LOT 2-B-2-B

Land situated along the Northwesternly boundary of Lot 2-B-2-C and on the Easterly side of Pua Melia Street at Waikoloa, South Kohala, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lot 2-B-2-C; and

Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu.

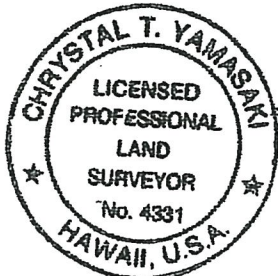
Beginning at the Northwesternly corner of this easement, being also the Northwesternly corner of Lot 2-B-2-C and a point on the Easterly side of Pua Melia Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 8,167.53 feet North and 3,300.58 feet West and running by azimuths measured clockwise from True South:

- |    |              |  |
|----|--------------|--|
| 1. | 259° 46'     | 339.49 feet along Lot 2-B-1 to a point;                      |
| 2. | 291° 44' 07" | 37.77 feet along Lot 2-B-2-B of this subdivision to a point; |
| 3. | 79° 46'      | 382.77 feet along the remainder of Lot 2-B-2-C to a point;   |

Thence, from a tangent azimuth of 200° 08' 20" following along the Easterly side of Pua Melia Street on a curve to the left with a radius of 630.00 feet, the chord azimuth and distance being:

4. 199° 05' 44.5"

22.94 feet to the point of beginning and containing an area of 7,220 Square Feet.



WES THOMAS ASSOCIATES

*Chrystal Thomas Yamasaki*

Chrystal Thomas Yamasaki  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. LS-4331

75-5749 Kalawa Street  
Kailua-Kona, Hawaii 96740-1817  
TMK: 6-8-002: portion 016 (3rd Division)  
May 19, 2017



R-323 STATE OF HAWAII  
 BUREAU OF CONVEYANCES  
 RECORDED  
 MAY 07, 2010 08:01 AM  
 Doc No(s) 2010-062607



/s/ NICKI ANN THOMPSON  
 REGISTRAR

20 4/4 Z2

ml  
 Kr

After Recordation, Return by Mail (X) Pick-up ( )

ATTN: MR MICHAEL MIROYAN  
 HAWAIIAN RIVERBEND LLC  
 P O BOX 3181  
 SARATOGA, CA 95070-1181

TG: 200953762 R  
 TGES: A93051292  
 LYNNE DONKERBROOK

P/S-4

KNK

Tax Map Key: (3) 6/8/002/021

Pages: 15

TITLE OF DOCUMENT: JOINT VENTURE AGREEMENT

1ST PARTY (names)

2ND PARTY (names and/or addresses)

AFFECTS TMK 3/6/8/002/051

LMD

Exhibit J

## JOINT VENTURE AGREEMENT

This Agreement is entered into this 29<sup>th</sup> Nov day of April 2010 between Waikaloa Mauka, LLC, a Delaware limited liability company ("WM") and Hawaiian Riverbend, LLC, a Hawaiian limited liability company, ("HR").

### RECITALS

A. WM is the owner of that certain real property located at Waikoloa Village, Hawaii at Puu Melia Street and Waikoloa Road, consisting of 10.873 acres of vacant land, being a portion of TMK#3-6-8-02-16 and soon to be TMK#3-6-8-002-051 (hereinafter referred to as "Parcel 16"), which parcel is owned without a loan encumbrance;

B. HR is the owner of that certain real property located at Waikoloa Village, Hawaii at Paniolo Avenue and Waikoloa Road, consisting of 31.322 acres of vacant land and bearing TMK#3-6-8-02-21 (hereinafter referred to as "Parcel 21"); and

C. Parcel 21 was the subject of earlier efforts by WM, as the property's former owner, to have Parcel 21 subdivided into three or more separate parts, one of which would consist of 10 acres. This 10 acre part was intended to be donated to the County of Hawaii (the "County") for park and civic center purposes, so that WM could receive other development approvals from the County, with relation to other land that was owned by WM, in the vicinity of Parcel 21. WM's plan regarding the County of Hawaii prior to its re-conveyance of the title of Parcel 21 to HR as settlement of its lawsuit between Miroyan and W. Mauka, et al. was that it was going to:

1. Donate a 10 acre park;
2. Provide access roads to and from the 10 park with ingress and egress for emergency vehicles such as for the Fire Marshall, etc.; and
3. Provide all utilities stubbed to the 10 acre park including but not limited to water, electric, sewer, phone, etc. from Waikoloa and/or Paniolo Roads.

D. These responsibilities, enumerated at C.1-C.3, and as further set forth herein, are now being equally borne by the Joint Venturers HR and WM. The parties have agreed to this arrangement because they were planned by WM when WM owned Parcel 21 prior to the 11/23/09 transfer to HR.

E. It is for this reason all the costs and improvements necessary to accomplish the purpose of the Joint Venture are to be borne equally by the Parties.

### AGREEMENT

1. PURPOSE OF JOINT VENTURE. The parties acknowledge and agree that the purpose of their joint venture is to effectuate the following objectives and the recitals above:

(a) Obtain approval of the County to subdivide Parcel 21 into three or more (see attached map, Exhibit A hereto) parts, consisting of one 10 acre part, several other parcels totaling approximately 14.5 acres to be rezoned for commercial development, and one part of approximately 6.5 acres, zoned for agricultural use.

(b) Donate the designated 10 acre part of Parcel 21 on behalf of WM to the County, and transfer Parcel 16 to HR in exchange for its loss of the 10 acres of Parcel 21 being donated to the County, and provided WM has met its cash contribution obligations herein,

(c) Split all reasonable and necessary entitlement and improvement costs of developing and completing through and until these purposes and recitals have been completed, Parcel 21 per County requirements on a 50/50 basis.

2. TERM AND SCOPE OF JOINT VENTURE. This joint venture shall continue through the end of approval process by the County or such earlier time as may be determined by a termination of this Agreement, according to its terms. The scope of the joint venture is limited to the matters expressly described in this Agreement. The parties do not intend, by this Agreement, to create a partnership or to create any other affiliation for any purpose not described herein.

3. DUTIES OF THE JOINT VENTURERS.

(a) WM agrees that, during the term of this Agreement, it will not sell, transfer or cause Parcel 16 to be encumbered by any mortgage loans or deeds of trust.

(b) The parties agree to record a copy of this Joint Venture Agreement, or other appropriate security instrument against Parcel 16 to fully secure WM's full performance under this Agreement.

(c) HR will use diligent and good faith efforts to continue with all previous plans to donate to the County the 10 acre portion of Parcel 21 for park and civic center uses, which the parties anticipate will be accomplished in its entirety, with improvements completed per County of Hawaii's requirements, prior to May, 2013. During the same period, HR shall proceed with diligent and good faith efforts with the development of the approximately 14.5 acre portion of Parcel 21, for commercial use.

(d) WM will use diligent and good faith efforts to assist HR in subdividing Parcel 21 into the aforementioned separate parts or other parts, as may become necessary and acceptable to the parties, to facilitate the donation, by HR, to the County, on behalf of WM, of the 10 acre portion of Parcel 21.

(e) The Joint Venturers will share equally in all the necessary and reasonable expenses of completing the process of subdividing and completing all improvement costs per County requirements for Parcel 21. Currently, these expenses are being projected under that certain February 23, 2010 EPS Project Sequence and Cost Document, a copy of which is attached hereto as Exhibit B "Project Cost," and incorporated herein. Michael Miroyan shall be Joint Venture Manager with authority to manage completion of the reasonable and necessary work to fulfill the purposes of the Joint Venture, including the tasks set forth on Exhibit B. The Joint Venturers shall have equal authority to approve each and every expenditure, within and above and beyond those identified on Exhibit B and to verify every expenditure, whatsoever, prior to its being paid.

(f) Payment of each Joint Venturer's share of costs and expenses will be made within the following time frame:

*Michael Miroyan*  
4/29/10



(i) HR's Initial Contribution of \$80,000 is to be held in a Joint Venture account, which is mutually acceptable to the parties hereto.

(ii) WM's Initial Contribution of \$80,000 shall be made as follows: (1) \$20,000 simultaneously paid out of escrow proceeds upon Michael Miroyan's pay-off of the \$300,000 first mortgage in favor of Vitoil, Inc.; and (2) WM promises to pay an additional \$60,000 into the Joint Venture account on or before September 1, 2010. These payments are intended to satisfy items 1-9, 13, and 15-17 on Exhibit B.

(iii) When the subject parcels are rezoned and a request for an additional payment is made by the Joint Venturers' Manager, Michael Miroyan, each Joint Venturer will deposit another \$40,000 into the established segregated account for the Joint Venture, to satisfy items 10, 11, 12 and 14 on Exhibit B.

(iv) Further and additional contributions for the purpose of the Joint Venture will be made, upon written request of the Joint Venturers' manager, according to the terms stated herein. It is anticipated and agreed that approximately eight months after completion of tasks 1 through 18 on Exhibit B, an additional approximately \$1.3 million dollars will be required to complete the "Construction Cost Estimate" portion of Exhibit B, which are meant to include the estimated costs of any on-site and off-site improvements required by County. Each Joint Venturer agrees to contribute one-half the additional capital requirement, in increments at the request of the Manager, Michael Miroyan, for purposes of the build out of these necessary on and off-site improvement costs. The build-out period is projected to take seven to nine months. If HR fails to make its share of the contributions for the on and off-site improvements, HR shall, upon 21 days demand by WM, either pay its full contribution for such improvements or transfer title to the re-zoned Lot 1, consisting of approximately 2.17 acres to WM.

(v) All payments of the Joint Venturers, excepting the Initial Contributions, shall be made within 15 days of the contribution of HR, deposited into the segregated account for the Joint Venture.

(g) The parties acknowledge and agree that HR shall encumber Parcel 21 with a mortgage loan and deed of trust, and so long as assurances are received from the lender that once all the improvements are complete, any mortgage loan or deed of trust encumbrance will be released from the 10 acre parcel prior to donation of the same to the County, by partial re-conveyance or other effective means.

(h) Simultaneously, upon completion of the above, together with the build-out of all improvements, and HR's donation of the 10 acre portion of Parcel 21 to the County, WM will simultaneously transfer and assign to HR, by Quitclaim Deed, free and clear title to Parcel 16. WM expressly acknowledges and agrees that their receipt of the park donation credit is expressly conditional on their complete performance of all their obligations hereunder.

#### 4. TERMINATION OF THE JOINT VENTURE:

This Agreement may be terminated by either Party for the material breach of the other party. The party intending to terminate shall give the defaulting party twenty-one (21) days written notice specifying the particular ground(s) for the termination. The Agreement may not be terminated under

*M. Miroyan*  
4/29/10

this provision if, during such twenty-one (21) day period, the defaulting party has cured, corrected, or eliminated the material breach or has taken steps to cure, correct or eliminate such material breach, which steps, if diligently prosecuted to a conclusion, are reasonably designed to effect a cure, correction, or elimination. In addition to any and all other available remedies, HR shall be entitled to Specific Performance of WM's obligation to convey Parcel 16 in the event WM defaults on any of its obligations as set forth herein.

5. CONDUCT OF THE JOINT VENTURE:

The Joint Venturers shall be jointly responsible for payment of the joint venture expenses as set forth on EPS Cost. Michael Miroyan shall devote such time as is required to manage the joint venture. The joint venture will be responsible for any and all contracts or agreements entered into on its behalf, provided all contracts and business proposals relating to the joint venture or this Agreement must have the signatures of both Joint Venturers, Michael Miroyan on behalf of HR and Stefan Martirosian on behalf of WM. Until and unless later changed by a writing, signed by both of the parties hereto, all responsibilities and rights, delegated in this Agreement to the "Joint Venturers' Manager" are hereby delegated to Michael Miroyan.

6. INDEMNIFICATION AND INSURANCE

The parties hereto may acquire and maintain their own insurance concerning any and all acts in which they may engage for the joint venture except that the Joint Venture shall at all times maintain and pay for liability insurance for Parcel 21 in an amount of at least \$1 million. Each party herein shall be responsible for its/her own acts, negligence and willful conduct concerning the joint venture and any liability incurred as a result of those acts when engaging in activity that is relevant to the joint venture.

7. ASSIGNMENTS AND TRANSFERS

Neither party shall assign or transfer its rights or duties in the joint venture or arising out of this Agreement without the express written consent of the other party.

8. RECORDS AND ACCOUNTING:

HR shall maintain or cause to be maintained a complete set of records, statements, and accounts concerning the operation of the joint venture, in which books shall be entered, fully and accurately, each transaction pertaining to the venture. All books and records will be open at all times for inspection and examination by the parties to the joint venture at reasonable business hours. The cost of maintaining the records, statements and accounts shall be borne by the Joint Venture.

The fiscal year of the joint venture shall commence on January 1 and close on December 31 of each year of operation. All accounting based on fiscal year figures shall be completed within sixty (60) days after the close of the fiscal year.

9. MISCELLANEOUS PROVISIONS

(a) Each party shall pay its own costs and expenses in this transaction, including legal fees, accounting fees, or brokerage fees, unless otherwise agreed to.

(b) All notices, requests, demands, claims, and other communications hereunder will be in writing. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given if (and then two business days after) personally delivered by the party giving notice or a courier service (1) For HR: Michael Miroyan, P.O. Box 3181, Saratoga, CA, 95070, fax: (408) 395-2358, Phone: (408) 613-0238; Email: [kjstice@hotmail.com](mailto:kjstice@hotmail.com), and (2) For WM: Stefan Martirosian, 120 Aspen Oaks Lane, Glendale, CA, 91207, Fax: (818) 243-4617, Phone: (818) 441-6569, Email: [Stefan@vitoilinc.com](mailto:Stefan@vitoilinc.com), postage prepaid, and addressed to the intended recipient to the address first set forth below. Any party may send any notice, request, demand, claims or other communication hereunder to the intended recipient at the address set forth above using any other means (including telecopy, telex, ordinary mail, or electronic mail), but no such notice, request, demand, claim, or other communication shall be deemed to have been duly given unless and until it actually is received by the intended recipient. Any party may change the address to which notices, requests, demands, claims, and other communications hereunder are to be delivered by giving the other parties notice in the manner herein set forth.

(c) This Agreement and the other agreements and documents referenced herein constitute the entire agreement between the parties hereto with respect to the subject matter hereof. No change, modification, alteration, amendment, agreement to discharge in whole or in part, abandonment or waiver of any of the terms and conditions of this Agreement shall be binding upon any party, unless the same shall be made by a written instrument signed and executed by both HR and WM, with the same formality as the execution of this Agreement.

(d) This Agreement shall bind and inure to the benefit of both the immediate parties hereto and their respectful heirs, executors, administrators, successors, and permitted assigns.

(e) This Agreement may be executed in two or more fully executed counterparts, each of which will be deemed an original binding the signer thereof against the other signing parties.

(f) Time is of the essence in this Agreement.

(g) This Agreement shall be governed by and construed in accordance with the laws of the State of California without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of California. Venue shall be in Santa Clara County, California.

(h) If any action is brought by either party against the other party arising out of this Agreement, the prevailing party shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in connection with the prosecution or defense of such action, in addition to other relief which may be available.

(i) Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and

*Handwritten signature*  
9/21/10

provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

(j) The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

(k) The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

(l) This Agreement may be executed by a party's signature transmitted by facsimile, and copies of this Agreement executed and delivered by means of facsimile signatures shall have the same force and effect as copies hereof executed and delivered with original signatures. All parties may rely upon facsimile signatures as if such signatures were originals. Any party executing and delivering this Agreement by facsimile shall promptly thereafter deliver a counterpart signature page of this Agreement containing said party's original signature for purposes of recording this Agreement against Parcel 16 or as otherwise may be required by the County of Hawaii.

(m) The parties agree that no third party beneficiary, intended or incidental, is created by this Agreement, including but not limited to the County.

ACKNOWLEDGED AND AGREED:

Dated: 4/29/10

WAIKOLOA MAUKA, LLC.

By: Serge Ghazarian

Print Name: SERGE GHAZARIAN

Title: officer

Dated:

HAWAIIAN RIVERBEND, LLC.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction.

(j) The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

(k) The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

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(m) The parties agree that no third party beneficiary, intended or incidental, is created by this Agreement, including but not limited to the County.

ACKNOWLEDGED AND AGREED:

Dated:

WAIKOLOA MAUKA, LLC.

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Dated:

4/29/10

HAWAIIAN RIVERBEND, LLC.

By: *Michael M. Royce*

Print Name: Michael M. Royce

Title: Manager Member

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

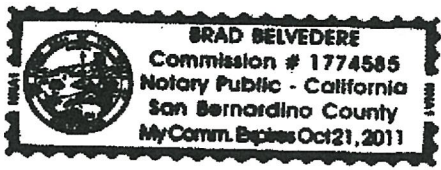
State of California

County of Los Angeles

On April 29, 2010 before me, Brad Belvedere  
Date Here Insert Name and Title of the Officer

personally appeared Serge Gharibian  
Name(s) of Signer(s)

who 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.

Signature Brad Belvedere  
Signature of Notary Public  
**BRAD BELVEDERE**

Place Notary Seal Above

**OPTIONAL**

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

**Description of Attached Document**

Title or Type of Document: Joint Venture Agreement

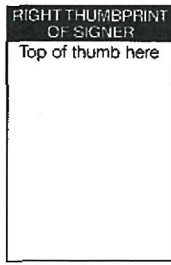
Document Date: April 29, 2010 Number of Pages: 6

Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Serge Gharibian

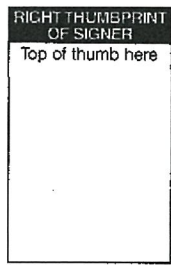
- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

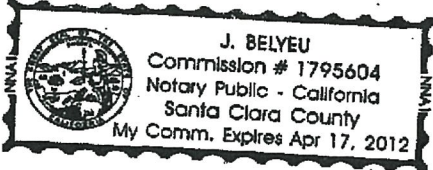
State of California

County of Santa Clara

On 4/29/2010 before me, J. Belyeu  
Date Here Insert Name and Title of the Officer

personally appeared Michael Miroshan  
Name(s) of Signer(s)

who 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.



Place Notary Seal Above

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.  
Signature J. Belyeu  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: \_\_\_\_\_  
Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_  
Signer(s) Other Than Named Above: \_\_\_\_\_

**Capacity(ies) Claimed by Signer(s)**

- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

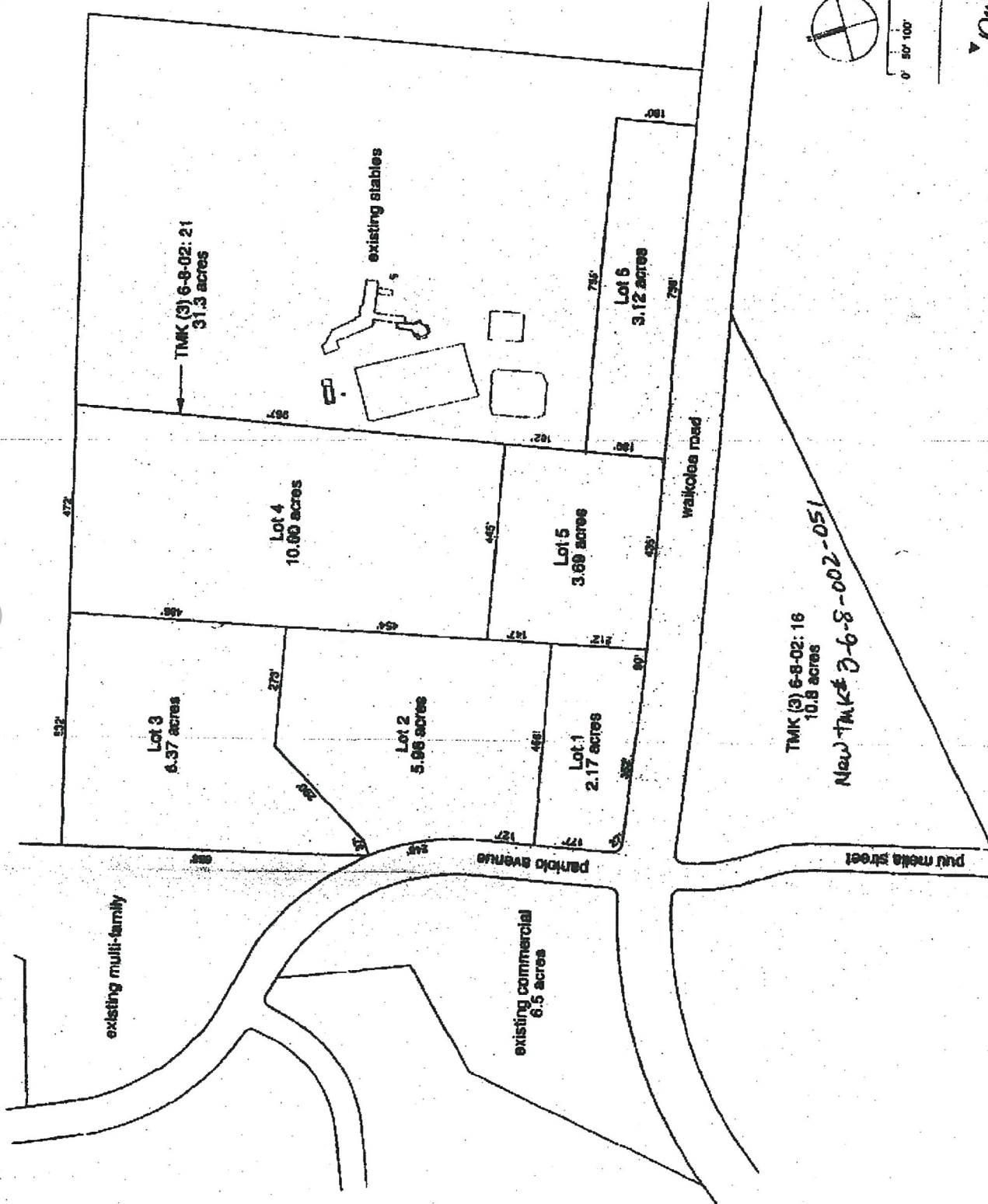
- Signer's Name: \_\_\_\_\_
- Individual
  - Corporate Officer — Title(s): \_\_\_\_\_
  - Partner —  Limited  General
  - Attorney in Fact
  - Trustee
  - Guardian or Conservator
  - Other: \_\_\_\_\_



Signer Is Representing: \_\_\_\_\_

**Exhibit A**





*May 14/10*



0' 50' 100' 200'

**Riehm Owensby**  
PLANNERS  
ARCHITECTS

A Mixed Use Master Planned Development . . . Waikoloa, Hawaii

**Exhibit B**



# Engineering

Progressive Solutions

P6052-10-001 CE

February 23, 2010

Mr. Mike Miroyan  
Hawaiian River Bend LLC  
P.O. Box 3181  
Saratoga, CA 95070  
P: 408-613-0238  
F: 408-395-2358

Subject: Preliminary Civil Engineering Service for Miroyan Waikoloa Village Development,  
TMK: 6-8-002: 021  
Memorandum – Project Sequence & Cost

Per our telephone conversation, the list below shows the tasks required (to best of my knowledge) and the ballpark estimate of the cost associated with each task.

Task	Task	Responsible Party	Est. time of duration*	Est. Cost**
1	Notice to Proceed	Owner	0 Week	
2	Submittal package for Jurisdictional Determination	EPI	0 - 3rd week	\$ 2,000
3	Detail topo survey of existing road improvements and culvert information, Paniolo Drive and Waikoloa Road	ALTA Survey or EPI	0 - 2nd week	\$ 10,000
4	Floodplain Study – Determining the existing floodplain width and propose channel section; determine usable land area	EPI	3 <sup>rd</sup> - 6 <sup>th</sup> week	\$ 19,000
5	Master planning of the site including the 10-acre park	Michael Riehm	7 <sup>th</sup> - 8 <sup>th</sup> week	\$ 10,000
6	Prepare preliminary subdivision map after Master Plan	EPI	9 <sup>th</sup> to 10 <sup>th</sup> week	\$ 2,000

*(Signature)*  
4/23/10

7	Environmental Study and Report	Ron Terry	0 - 4 <sup>th</sup> week	\$ 10,000	
8	Traffic Impact Study	Traffic Consultant	0 - 12 <sup>th</sup> week	\$ 20,000	
9	Archeological Study	Arch Consultant	0 - 8 <sup>th</sup> week	\$ 12,000	
10	Design of Subdivision Improvements, access road, stream crossing, stream alteration, water and sewer improvements	EPI	12 <sup>th</sup> to 20 <sup>th</sup> week	\$ 40,000	pay ~ Ap. 2011
11	Soils Investigation and Report	Soils Engineer	0-12 <sup>th</sup> week	\$ 30,000	pay ~ Ap. 2011
12	Unexploded Ordinance Survey	USACE	0 - 12 <sup>th</sup> week		
13	Prepare submittal to Planning Department for Zone Change review	Sid Fuke	9 <sup>th</sup> - 10 <sup>th</sup> week	\$40,000	
14	Prepare 404/Stream alteration permit for USACE	Ron Terry & EPI	20 <sup>th</sup> - 40 <sup>th</sup> week	\$ 8,000	pay ~ Ap. 2011
15	Construction plans for subdivision improvements to DPW/Utility Company review and approval	EPI	20 <sup>th</sup> - 21 <sup>th</sup> week	Included in Task 10	
16	Final approval of all construction permits	Agencies	24 <sup>th</sup> - 50 <sup>th</sup> week	\$ 2500 Permit fee	
17	Final Subdivision Map and Staking	EPI	40 <sup>th</sup> - 40 <sup>nd</sup> week	\$ 3,000	
18	Post bond on project construction	Owner	41 <sup>st</sup> - 42 <sup>nd</sup> week		
	Final Change of Zone and Subdivision Approval	Sid Fuke	43 <sup>rd</sup> - 45 <sup>th</sup> week		

\* The final completion time depends largely on the reviewing and approving agencies. This time schedule is likely to be stretched as the project progresses.

\*\* The estimated costs are ballpark figures for budgetary purposes only.

**0% Design Construction Cost Estimate**

Water CIAC fee (facility charge).....  
 775 linear feet of 50' wide fully improved road with curb and sidewalks, 8-inch PVC sewer and 8-inch ductile iron water, overhead power.....  
 2 UIC drywells.....  
 Stream Crossing (culvert or bridge)

????

775' @ \$900/ft = \$697,500

2 @ \$35,000 = \$ 70,000

????

*M. Miroyan*  
 4/23/10



SidneyFuke, Planning Consultant

100 Pauahi Street, Suite 212 • Hilo, Hawaii 96720  
Telephone: (808) 969-1522 • Cell: (808) 989-0640  
E-mail: sidfuke@hawaiiintel.net

• Planning • Variance • Zoning  
• Subdivision • Land Use Permits  
• Environmental Reports

February 29, 2016

Mr. Daniel Orodener, Executive Officer

Land Use Commission  
STATE OF HAWAII  
P.O. Box 2359  
Honolulu, HI 96804

2016 MAR - 2 A 8:40  
LAND USE COMMISSION  
STATE OF HAWAII

Dear Mr. Orodener:

**Subject: Annual Report – Docket No. A06-767**  
**Waikoloa Mauka, LLC, TMK: (3) 6-8-002: 016**

Pursuant to Condition 21 regarding the subject matter, please find attached the subject matter. We apologize for not being able to submit one last year and intent to submit another one around this time next year.

Inasmuch as very little progress has been made since the last report, the updates are noted in bold, using the existing report. Please note that a copy of this letter with attachment has been also sent to the County of Hawai'i Planning Department and the State Office of Planning.

We trust that this fulfills the annual report requirement. If not or if there are questions on this matter, please feel free to contact this office or the Petitioner. Again, thank you very much for this reminder.

Sincerely,

SIDNEY M. FUKU  
Planning Consultant

Enclosure – Annual Report

Copy – County of Hawai'i Planning Department w/ enclosure

State Office of Planning w/ enclosure

Waikoloa Mauka, LLC w/ enclosure

Exhibit K

**ANNUAL REPORT - 2016**  
**WAIKOLOA MAUKA, LLC - DOCKET NO. A06-767**

This report is being submitted pursuant to Condition 21 which requires the submittal of annual reports to the State Land Use Commission (“Commission”), Office of Planning (“OP”), and County Planning Department (“CPD”) regarding Waikoloa Mauka, LLC’s (“Petitioner”) ~~progress in complying with the conditions imposed by the Commission as outlined in Docket No. A06-767 (“Docket”)~~

**The last annual report was filed in a letter, dated March 18, 2014. This report is intended to cover all activities to date, with the next due on or about March 2017.**

I. GENERAL BACKGROUND

A. Project Location

The subject site, consisting of approximately 731.579 acres, is located on the south side of Waikoloa Road near its intersection with Paniolo Avenue in Waikoloa, South Kohala, Island and County of Hawai`i. The Waikoloa Stables is located directly across or north of the subject site.

B. Project History and Proposed Development

In 1990, the former owners of the subject property, Waikoloa Development Company, requested and received County rezoning approval (Ordinance No. 90 160) for approximately 761 acres of land from Unplanned (U) and Multiple-family Residential (RM-1.5) to Residential-Agriculture (RA-1a) and Open (O). This action allowed the development of a golf course residential subdivision consisting of 398 1-acre sized lots. The approval was subject to a number of conditions, including development timetable.

In 1995, conditions B and C of Ordinance No. 90 160 were amended. The amendments (Ordinance No. 95 51) required that final subdivision approval of no less than 175 lots be secured within a 5-year period. It further required the construction of channelized improvements at the intersection of Waikoloa Road and Pua Melia Street/Paniolo Avenue before June 30, 1996, as well as the construction of traffic signalization improvements when the number of lots exceeded 350 or as may be required by the Department of Public Works.

Pursuant to the above ordinance and its amendment, tentative subdivision approval was initially granted in 1993 and subsequently amended on March 3, 1994. The channelization improvements were completed in 1996. As allowed by the rezoning ordinance, an administrative time extension was granted by the Planning Director on May 9, 2000 to secure final subdivision approval. This extension was to March 21, 2005.

On January 5, 2005, the former owner requested an amendment to Condition B of Ordinance No. 95 51 which would allow final subdivision approval to be secured before March 21, 2015. During the time the request was being considered by the County Council, Waikoloa Mauka, LLC ("Petitioner") purchased the subject property on or about September 2005. The Council subsequently approved the request as Ordinance No. 05 157, but added more conditions. One of these conditions required the affected area be reclassified into the State Land Use Rural district before final subdivision approval could be secured.

The applicant then proceeded to prepare an Environmental Impact Statement and submitted its request to reclassify the site into the State Land Use Rural District. This request was ultimately approved by the State Land Use Commission on June 10, 2008 in Docket No. A06-767.

While the reclassification request was being considered, the Petitioner requested further amendments to Ordinance No. 05 157 relating to the nature of the traffic improvements at the intersection of Waikoloa Road and Pua Melia Street/Paniolo Drive and allowing another access to the subject project. Relative to the intersectional improvements, at the request of the councilmember and a number of residents of the Waikoloa community, the Petitioner requested that the improvements be changed from a traffic signal to a roundabout system.

Although the requests were approved as Ordinance No. 07 127 and became effective on September 28, 2007, additional conditions were imposed. One of these required securing final subdivision approval within five (5) from the effective date of the amendment (September 28, 2012 with no allowance for an administrative time extension and not ten (10) years or March 2015 deadline as originally allowed by the former ordinance.

The Petitioner then requested additional time to address this requirement. On March 21, 2013, a rezoning time extension ordinance (Ordinance No. 13 29) became effective. This ordinance required that final subdivision approval of no less than fifty (50) lots be secured before March 21, 2018 (5 years) and that final subdivision approval for the balance be secured no later than March 21, 2023 (10 years).

Please also be informed that, to date, tentative subdivision approval was issued on April 5, 2007; the on-site infrastructure construction plans have been prepared; the construction plans for the roundabout improvements at the Waikoloa Road/Paniolo intersection have been completed; right-of-access to the site has been issued to the U.S. Army Corps of Engineers for the purpose of conducting remedial investigation and removal of any residual munitions, as is common in this area; and efforts to dedicate 10+ acres of land situated proximate to the subject site to the County of Hawai'i for a community center and park are on-going. This is to help address the County rezoning park and recreation fair share requirement for the proposed 398-lot subdivision.

Work on all of the above is still on-going. Final subdivision approval cannot be secured until all of the above, including affordable housing, can be fulfilled. The Petitioner is attempting to address these numerous requirements in a timely manner.

## II. CONDITIONS OF APPROVAL (DOCKET NO. A06-767)

In addition to having to comply with the conditions of approval of the County Rezoning Ordinance affecting the subject site, the Petitioner is also required to fulfill the twenty four (24) commissions imposed by the State Land Use Commission. These conditions and status are noted herein.

### A. Compliance with Representations to the Commission

The concept of the project has not changed, which is to develop 398+/- 1-acre sized lots. The area intended for a golf course will be used for both drainage ways as well as open passive recreational areas that will include walking trails.

### B. Completion of Project

The Commission required that the project be completed no later than ten (10) years of the date of the Commission's decision or June 10, 2018. "Buildout" was defined as having completed the backbone infrastructure to allow for the sale of individual lots.

Notwithstanding the County's rezoning time extension of fifty (50) lots by March 21, 2018 and the balance by March 21, 2023, the Petitioner understands that the more stringent performance requirement of buildout by June 10, 2018 is binding. The basic on-site construction plans have been completed. The Petitioner will thus work towards fulfilling that performance requirement.

**Although nothing physical has occurred on the ground to date, the Petitioner has been working diligently to secure a development partner, as well as trying to address other conditions of approval as will be discussed below.**

### C. Reversion on Failure to Complete Project

The Petitioner understands that its failure to complete buildout of the project or secure a bond will be subject to possible further review by the Commission to determine whether the property should revert to its previous Agricultural classification.

### D. Water Resource Allocation

The Petitioner has been working with the private water company in this area on this



matter. Please note that the County rezoning of the property also requires provision of a potable water system that is in compliance with the Department of Water Supply's requirements prior to receipt of final subdivision approval.

E. Water Conservation Measures

~~The Petitioner will be implementing water conservation measures particularly as they~~ might relate to irrigation systems. The goal is to require drought tolerant plants as part of the covenants, conditions, and restrictions ("CCRs"). The Petitioner will provide a copy of the CCRs to the Commission within thirty (30) days after they become enforceable.

F. Transportation

To date, no agreement has been reached with the State Department of Transportation ("DOT") with respect to the intersectional improvement requirements at Waikoloa Road and Queen Ka'ahumanu Highway. This matter has to be coordinated with the time/share resort project (Hilton Grand Vacation Club) located on the *makai* side of the Queen Ka'ahumanu Highway, who also has an obligation to improve this intersection. This discussion is still on-going. **It should be noted, however, that improvements at this intersection are now being undertaken by the developers of the Hilton Grand Vacation Club. As such, the Petitioner's participation on this soon-to-be completed improvement may not be applicable.**

Likewise, no agreement with the DOT has been reached with respect to improvements to the Waikoloa Road/Mamalahoa Highway intersection. The Petitioner understands that these need to be done prior to receipt of final subdivision approval and will work towards fulfilling this obligation.

G. Street Lights

The project's lighting system will be shielded or low sodium to address not only impacts to the flight of birds but astronomy activities.

H. Plant Species

The Petitioner will try to minimize destruction of wiliwili trees in this area. Over the past few years, the Petitioner has allowed the Waikoloa Outdoor Circle and the Waikoloa Dry Forest Initiative access through the project area to maintain the wiliwili trees and other dry forest trees located on Waikoloa Village Association property situated adjacent to the

subject property. The Petitioner intends to coordinate its on-site preservation efforts, wherever possible, with those organizations.

I. Affordable Housing

The Petitioner has looked at several options to address this requirement in accordance with the County Affordable Housing Code. These options include satisfying the requirements on site or off-site, particularly as it owns properties within Waikoloa Village that are zoned for multiple-family uses. There could also be a variation of on- and off-site units.

**The Petitioner has been working with the County Office of Housing and Community Development in setting aside lands within the petitioned area for the development of rental units. That discussion is on-going.**

In either event, before final subdivision approval for even the first 50 lots can be secured, this requirement will have to be fulfilled. This will require an agreement with the County Office of Housing and Community Development. When that is done, pursuant to this condition, a copy will be provided the Commission.

J. Previously Unidentified Burial/Archaeological Sites

The Petitioner understands that during any land disturbance activities, work will have to cease in the event inadvertent finds are made and proceed only upon clearance from the State Historic Preservation Division (“SHPD”). This condition, which is also found in concept in the County rezoning ordinance affecting the subject site, will be adhered to.

K. Archaeological Site 22

The Petitioner will consult and comply with SHPD’s recommendation regarding this site. To date, the cultural value of this site has not been definitively ascertained. As such, further work will be done by the Petitioner and, in the end, the recommendation of SHPD will be adhered to, be it for data recovery or preservation.

L. Drainage

A preliminary drainage plan was prepared and submitted to the County Department of Public Works (“DPW”) for its review and approval in conjunction with the on-site infrastructure plan. The plan may be modified, given the Petitioner’s plans of now using the former planned golf course area to accommodate potential on-site drainage. In either

event, the drainage plan and infrastructure construction plans will have to be approved before construction activities can take place.

M. Solid Waste

A Solid Waste Management Plan will be developed and submitted for the review and approval of the County Department of Environmental Management prior to receipt of final subdivision approval. Please note that this is also a requirement of the County rezoning ordinance affecting the subject site.

N. Civil Defense

Petitioner will comply with this requirement by either funding or constructing its fair share of an adequate solar-powered civil defense measure that services the subject site.

O. Established Access Rights Protected

The Petitioner will allow access through the subject area to legitimate native Hawaiian claims for the purpose of exercising their subsistence, cultural and religious practices.

P. Air Quality Monitoring

If required by the Department of Health, the Petitioner will participate, on a fair share basis, in an air quality monitoring program.

Q. Best Management Practices (“BMP”)

The Petitioner intends to integrate BMP not only in its infrastructural design but in its implementation. Contractors will be required to review and comply with applicable State regulations regarding this aspect.

R. Energy Conservation Measures

The Petitioner, through its CCR’s, will encourage homeowners to employ energy conservation measures, such as the use of solar and/or photovoltaic systems, placement of windows to take advantage of wind patterns, and the like.

S. Notice of Change of Ownership

There has been no change of ownership relative to the Petitioned area.

T. Annual Reports

This report is being submitted, albeit a **year** delayed, pursuant to this requirement.

U. Release of Conditions

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To date, the Petitioner has not filed a request or motion to be relieved of any of the conditions. It intends to in the future as more conditions are fulfilled.

V. Notice of Imposition of Conditions

The Petitioner's then attorney submitted two letters to the Commission. One was dated June 20, 2008, wherein a copy of the recorded notice to imposition of the Commission's conditions was transmitted. The other, dated August 5, 2008, requested the review and approval of the conditions to be recorded, but also included the recorded conditions, dated August 11, 2008.

W. Recordation of Conditions

This was covered in item V above.

VIM



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

June 01, 2017 8:01 AM

Doc No(s) A-63610545



1 1/1 ICL  
B-3299860

/s/ LESLIE T. KOBATA  
REGISTRAR

LAND COURT

REGULAR SYSTEM

AFTER RECORDATION, RETURN BY MAIL (x) PICK UP ( )

Wes Thomas Associates  
75-5749 Kalawa Street  
Kailua-Kona, HI 96740

TITLE GUARANTY OF HAWAII HAS  
FILED THIS DOCUMENT FOR RECORD  
AS AN ACCOMMODATION ONLY. THIS  
DOCUMENT HAS NOT BEEN  
REVIEWED OR IN ANY WAY EXAMINED  
AS TO ITS EFFECT ON REAL PROPERTY.

TG ACCOM 489706c *fln*

This document contains 20 pages.

TITLE OF DOCUMENT:

AFFIDAVIT OF CHRYSAL THOMAS YAMASAKI

PARTIES TO DOCUMENT:

PROPERTY DESCRIPTION:	:	LIBER
TMK: 6-8-002: 016 (3rd Division)	:	PAGE
	:	DOCUMENT NO.:
OWNER: Waikoloa Highlands, Inc.	:	
ADDRESS: c/o Sidney Fuke	:	TRANSFER CERTIFICATE OF
100 Pauahi Street, Suite 212	:	TITLE NO (S).:
Hilo, Hawaii 96720	:	

AFFIDAVIT OF CHRYSTAL THOMAS YAMASAKI

STATE OF HAWAII            )  
  ) SS:  
COUNTY OF HAWAII        )

CHRYSTAL THOMAS YAMASAKI, being first duly sworn on oath, deposes and says:

1. I am a Licensed Professional Land Surveyor, No. LS-4331, in the County and State of Hawaii.

2. Attached hereto as Exhibit "A" is a true and correct copy of a letter dated May 15, 2017 from Michael Yee, Planning Director, County of Hawaii, regarding the FINAL SUBDIVISION APPROVAL NO. SUB-17-001716, FINAL PLAT MAP, SUBDIVIDER: WAIKOLOA HIGHLANDS, INC., Proposed Subdivision of Lot 2-B-2, Being a Portion of Royal Patent 5671, Land Commission Award 8521-B, Apana 1, Into Lots 2-B-2-A, 2-B-2-B & 2-B-2-C, Waikoloa, South Kohala, Island of Hawai'i, Hawai'i, TMK: 6-8-002: 016 [(3rd Division)]. Exhibit "A" is the letter granting final approval for recordation with the State of Hawaii Bureau of Conveyances in accordance with the Subdivision Code, Chapter 23, of the County of Hawaii.

3. A true and correct reduced copy of the certified MAP SHOWING SUBDIVISION OF LOT 2-B-2, Being a Portion of R.P. 5671, L.C. Aw. 8521-B, Ap 1 to G. D. Hueu, INTO LOT 2-B-2-A, LOT 2-B-2-B AND LOT 2-B-2-C At Waikoloa, South Kohala, Island and County of Hawaii, State of Hawaii is attached hereto as Exhibit "B".

4. Attached hereto as Exhibit "C" is a true and correct copy of the metes and bounds descriptions of Lots 2-B-2-A, 2-B-2-B and 2-B-2-C.

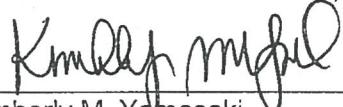
5. I hereby certify that the metes and bounds description set forth in Exhibit "C" conforms to the accompanying approved final plat map.

6. This Affidavit is made in accordance with Hawaii Revised Statutes, Section 502-17(d).

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
CHRISTAL THOMAS YAMASAKI

Subscribed and sworn to before me  
this 26th day of May, 2017.

  
\_\_\_\_\_  
Kimberly M. Yamasaki  
Notary Public, State of Hawaii  
My Commission Expires: 10/02/2017



NOTARY CERTIFICATION  
Doc. Date: None at time of notarization # Pages: 20

Kimberly M. Yamasaki 3rd Circuit

Doc. Description: Affidavit of Chrystal Thomas Yamasaki for Waikoloa Highlands, Inc.

  
\_\_\_\_\_  
Notary Signature

5/26/2017  
Date

Harry Kim  
Mayor



Michael Yee  
Director

Daryn Arai  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

County of Hawai'i  
PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

May 15, 2017

Chrystal Thomas Yamasaki, LPLS  
Wes Thomas Associates  
75-5749 Kalawa Street, Suite 201  
Kailua-Kona, HI 96740

RECEIVED  
MAY 25 2017  
#18858.2  
WES THOMAS ASSOCIATES

Dear Ms. Yamasaki:

**FINAL SUBDIVISION APPROVAL NO. SUB-17-001716**

**FINAL PLAT MAP**

**SUBDIVIDER: WAIKOLOA HIGHLANDS, INC.**

Proposed Subdivision of Lot 2-B-2,  
Being a Portion of Royal Patent 5671,  
Land Commission Award 8521-B, Apana 1,  
Into Lots 2-B-2-A, 2-B-2-B & 2-B-2-C,  
Waikoloa, South Kohala, Island of Hawai'i, Hawai'i  
TMK: 6-8-002:016 (SUB-17-001716)

This is to acknowledge receipt of ten (10) copies of the final plat map dated May 5, 2017, and Certification of Staking for the referenced application.

Please be informed that final subdivision approval for recordation is hereby granted to the final plat map as attached herewith inasmuch as all requirements of the Subdivision Code, Chapter 23, have been met.

You and the subdivider may wish to consult an attorney for the preparation of the necessary legal documents and description of the certified final plat map for the purpose of recordation with the State of Hawaii, Bureau of Conveyances.

By a copy of this letter, we are forwarding a copy of the certified final plat map and application to the listed officers for their file.



Chrystal Thomas Yamasaki, LPLS  
Wes Thomas Associates  
Page 2  
May 15, 2017

Copies of the certified final plat map are enclosed.

Sincerely,



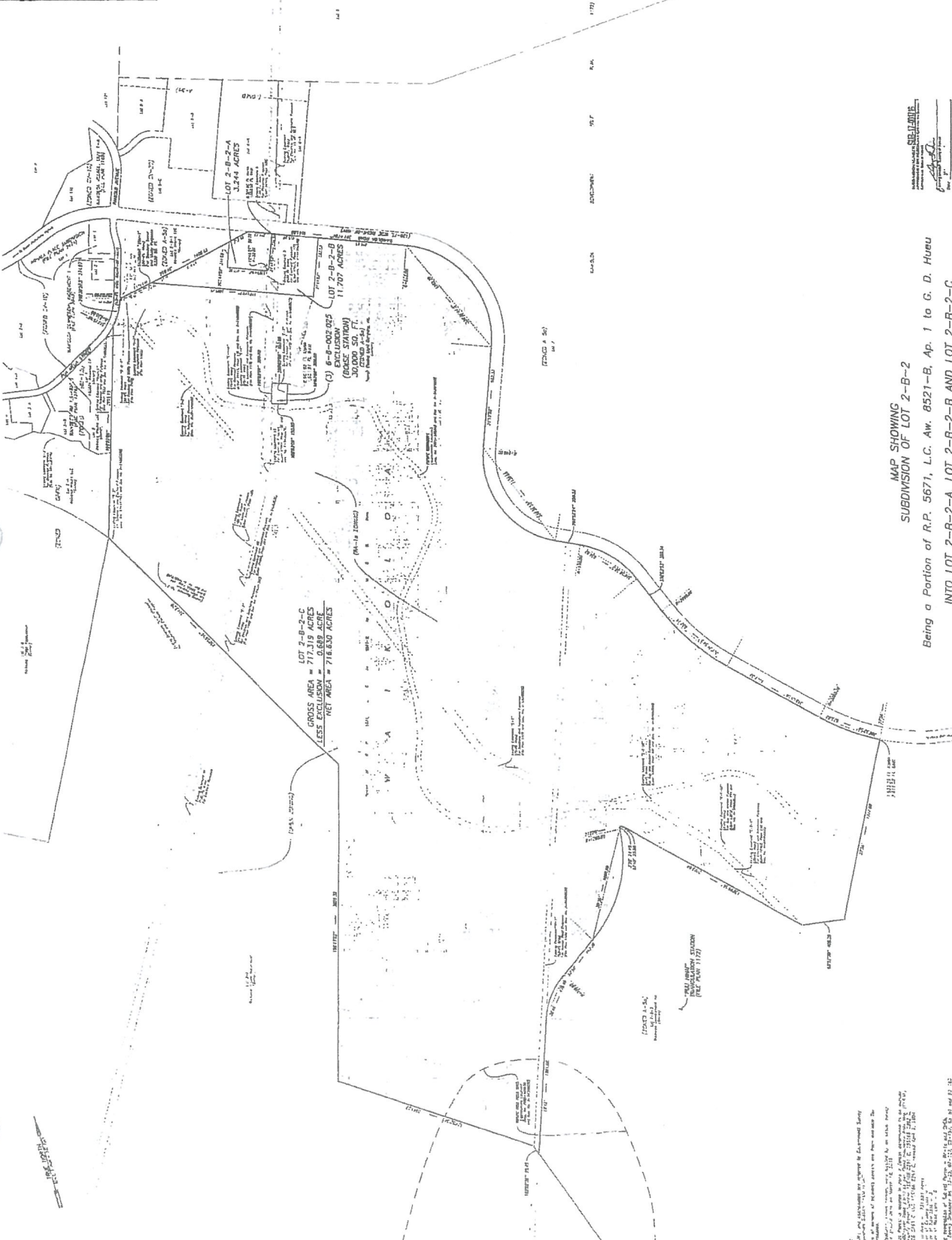
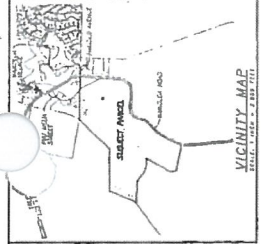
MICHAEL YEE  
Planning Director

ETC:lnm

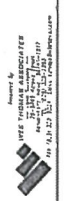
Coh33\planning\public\Admin Permits Division\Subdivision\2017\2017-2\SUB-17-001716WaikoloaHighlandsFPMFSA 05-15-17

Encs.: 2 Certified FPM

xc:     Manager, DWS w/Certified FPM & application  
          Director, DPW w/Certified FPM & application  
          District Environmental Health Program Chief, DOH w/Certified FPM & application  
          District Engineer, DOT w/Certified FPM & application  
          Planning Department-Kona w/Certified FPM & application  
          Real Property Tax Division-Kona w/Certified FPM  
          Tax Maps and Records Supervisor w/Certified FPM  
          Waikoloa Highlands, Inc.  
          Sidney M. Fuke, Planning Consultant  
          SUB-89-000179(Waikoloa Mauka); FSA-SUB-09-000887



MAP SHOWING  
 SUBDIVISION OF LOT 2-B-2  
 Being a Portion of R.P. 5671, L.C. Aw. 8521-B, Ap. 1 to G. D. Hueu  
 INTO LOT 2-B-2-A, LOT 2-B-2-B AND LOT 2-B-2-C  
 At Waikaloa, South Kohala  
 Island and County of Hawaii, State of Hawaii



NOTES:  
 1. All dimensions are given in feet and inches.  
 2. The area of the subject area is 11,707.000 square feet.  
 3. The area of Lot 2-B-2-C is 717.318 acres.  
 4. The area of Lot 2-B-2-A is 1,344.000 acres.  
 5. The area of Lot 2-B is 11,707.000 acres.  
 6. The area of the bridge station is 11,707.000 acres.  
 7. The area of the easement is 11,707.000 acres.  
 8. The area of the road is 11,707.000 acres.  
 9. The area of the bridge is 11,707.000 acres.  
 10. The area of the station is 11,707.000 acres.

LOT 2-B-2-A

Land situated on the Southerly side of Waikoloa Road at Waikoloa, South Kohala, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lot 2-B-2; and

Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu.

Beginning at the Northeasterly corner of this parcel of land, being also the Northwesterly corner of Lot 2-B-2-B of this subdivision and being a point on the Southerly side of Waikoloa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINA" being 8,326.80 feet North and 1,688.99 feet West and running by azimuths measured clockwise from True South:

Thence, for the next four (4) courses following along Lot 2-B-2-B of this subdivision and along the remainders of Lot 2-B-2 and Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu:

- 1. 21° 44' 07" 336.51 feet to a point;
- Thence, following on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being:
- 2. 66° 44' 07" 28.28 feet to a point;
- 3. 111° 44' 07" 405.00 feet to a point;
- 4. 201° 44' 07" 244.00 feet to a point;
- 5. 259° 46' 212.50 feet along Lot 2-B-1 and along the remainder of Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point;

6. 291° 44' 07"

244.73 feet along the Southerly side of Waikoloa Road to the to the point of beginning and containing an area of 3.244 Acres.

SUBJECT, HOWEVER, to a portion of Existing Easement 8 (100-Ft. Wide) for Electrical Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 11411 page 135 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-4" (75-Ft. Wide) for Electrical and Telephone Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. A-54080020 and as shown on File Plan 1172.



WES THOMAS ASSOCIATES

*Chrystal T. Yamasaki*

Chrystal Thomas Yamasaki  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. LS-4331

75-5749 Kalawa Street  
Kailua-Kona, Hawaii 96740-1817  
TMK: 6-8-002: portion 016 (3rd Division)  
May 19, 2017

LOT 2-B-2-B

Land situated on the Southerly side of Waikoloa Road at Waikoloa, South Kohala, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lot 2-B-2; and

Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu.

Beginning at the Northwesterly corner of this parcel of land, being also the Northeasterly corner of Lot 2-B-2-A of this subdivision and being a point on the Southerly side of Waikoloa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 8,326.80 feet North and 1,688.99 feet West and running by azimuths measured clockwise from True South:

- |    |              |          |   |
|----|--------------|----------|---|
| 1. | 291° 44' 07" | 455.27   | feet along the Southerly side of Waikoloa Road to a point;  |
| 2. | 21° 44' 07"  | 565.00   | feet along Lot 2-B-2-C of this subdivision and along the remainders of Lot 2-B-2 and Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point; |
| 3. | 111° 44' 07" | 1,605.29 | feet along Lot 2-B-2-C of this subdivision and along the remainders of Lot 2-B-2 and Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point; |
| 4. | 259° 46'     | 854.64   | feet along Lot 2-B-1 and along the remainder of Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point;                                      |

Thence, for the next four (4) courses following along Lot 2-B-2-A of this subdivision and along the remainders of Lot 2-B-2 and Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu:

5. 21° 44' 07" 244.00 feet to a point;

6. 291° 44' 07" 405.00 feet to a point;

Thence, following on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

7. 246° 44' 07" 28.28 feet to a point;

8. 201° 44' 07" 336.51 feet to the point of beginning and containing an area of 11.707 Acres.

SUBJECT, HOWEVER, to a portion of Existing Easement 8 (100-Ft. Wide) for Electrical Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 11411 page 135 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-4" (75-Ft. Wide) for Electrical and Telephone Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. A-54080020 and as shown on File Plan 1172.

TOGETHER WITH, Easement "SSU-1" (20-Ft. Wide) for Sanitary Sewer and Utility Purposes over and across Lot 2-B-2-C and being more particularly described by the attached description.



WES THOMAS ASSOCIATES

*Crystal Thomas Yamasaki*

Crystal Thomas Yamasaki  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. LS-4331

75-5749 Kalawa Street  
Kailua-Kona, Hawaii 96740-1817  
TMK: 6-8-002: portion 016 (3rd Division)  
May 19, 2017

EASEMENT "SSU-1"  
 (20-FT. WIDE)  
 FOR SANITARY SEWER AND UTILITY PURPOSES  
 OVER AND ACROSS LOT 2-B-2-C  
IN FAVOR OF LOT 2-B-2-B

Land situated along the Northwesterly boundary of Lot 2-B-2-C and on the Easterly side of Pua Melia Street at Waikoloa, South Kohala, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lot 2-B-2-C; and

Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu.

Beginning at the Northwesterly corner of this easement, being also the Northwesterly corner of Lot 2-B-2-C and a point on the Easterly side of Pua Melia Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 8,167.53 feet North and 3,300.58 feet West and running by azimuths measured clockwise from True South:

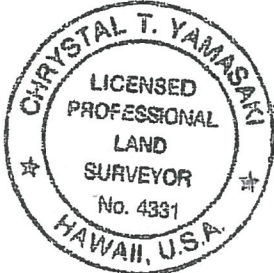
- |    |              |  |
|----|--------------|--|
| 1. | 259° 46'     | 339.49 feet along Lot 2-B-1 to a point;                      |
| 2. | 291° 44' 07" | 37.77 feet along Lot 2-B-2-B of this subdivision to a point; |
| 3. | 79° 46'      | 382.77 feet along the remainder of Lot 2-B-2-C to a point;   |

Thence, from a tangent azimuth of 200° 08' 20" following along the Easterly side of Pua Melia Street on a curve to the left with a radius of 630.00 feet, the chord azimuth and distance being:

4. 199° 05' 44.5" 22.94 feet to the point of beginning and containing an area of 7,220 Square Feet.

WES THOMAS ASSOCIATES

Chrystal Thomas Yamasaki  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. LS-4331



75-5749 Kalawa Street  
Kailua-Kona, Hawaii 96740-1817  
TMK: 6-8-002: portion 016 (3rd Division)  
May 19, 2017



LOT 2-B-2-C

Land situated on the Southwesterly side of Waikoloa Road at Waikoloa, South Kohala, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lot 2-B-2; and

Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu.

Beginning at the Northeasterly corner of this parcel of land, being also the Northwesterly corner of Lot 2-B-3 and being a point on the Southerly side of Waikoloa Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 1,933.35 feet North and 2,611.02 feet East and running by azimuths measured clockwise from True South:

Thence, for the next nine (9) courses following along Lot 2-B-3 and along the remainder of Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu:

- 1. 27° 56' 1,777.88 feet to a point;
- 2. 98° 52' 20" 408.28 feet to a point;
- 3. 135° 05' 56" 2,023.07 feet to a point;
- 4. 87° 40' 27.80 feet to a point;
- 5. 3° 20' 24.45 feet to a point;

Thence, from a tangent azimuth of 3° 20' following on a curve to the right with a radius of 1,200.00 feet, the chord azimuth and distance being:

- 6. 30° 35' 1,098.90 feet to a point;

7. 57° 50' 440.00 feet to a point;

Thence, following on a curve to the left with a radius of 720.00 feet, the chord azimuth and distance being:

8. 38° 46' 470.40 feet to a point;

9. 19° 42' 1,301.88 feet to a point;

Thence, for the next four (4) courses following along Lot 3-A and along the remainder of Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu:

10. 160° 02' 36" 95.45 feet to a point;

11. 124° 52' 31" 2,011.22 feet to a point;

12. 196° 43' 02" 3,059.30 feet to a point;

13. 150° 55' 16" 3,143.20 feet to a point;

14. 198° 03' 09" 2,055.15 feet along Lot 5-A, Lot 2 and Lot 1 of Waikoloa RM 1.5-Unit 1 (File Plan 1378) and along the remainder of Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point;

Thence, from a tangent azimuth of 223° 15' 46" following along the Easterly side of Pua Melia Street on a curve to the left with a radius of 630.00 feet, the chord azimuth and distance being:

15. 210° 39' 27.5" 274.97 feet to a point;

16. 259° 46' 339.49 feet along Lot 2-B-1 and along the remainder of Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point;

17. 291° 44' 07" 1,605.29 feet along Lot 2-B-2-B of this subdivision and along the remainders of Lot 2-B-2 and Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point;

18. 201° 44' 07" 565.00 feet along Lot 2-B-2-B of this subdivision and along the remainders of Lot 2-B-2 and Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu to a point;

Thence, for the next ten (10) courses following along the Southwesterly side of Waikoloa Road:

19. 291° 44' 07" 861.80 feet to a point;

Thence, following on a curve to the right with a radius of 910.00 feet, the chord azimuth and distance being:

20. 336° 31' 44.5" 1,282.29 feet to a point;

21. 21° 19' 22" 982.30 feet to a point;

Thence, following on a curve to the left with a radius of 840.00 feet, the chord azimuth and distance being:

22. 338° 36' 23" 1,139.66 feet to a point;

23. 295° 53' 24" 250.22 feet to a point;

Thence, following on a curve to the right with a radius of 910.00 feet, the chord azimuth and distance being:

24. 316° 58' 38.5" 654.82 feet to a point;

25. 338° 03' 53" 399.34 feet to a point;

Thence, following on a curve to the left with a radius of 2,090.00 feet, the chord azimuth and distance being:

26. 326° 34' 54.5" 832.14 feet to a point;

27. 315° 05' 56" 1,029.38 feet to a point;

Thence, following on a curve to the left with a radius of 2,090.00 feet, the chord azimuth and distance being:

28. 306° 30' 58" 623.82 feet to the point of beginning and containing an GROSS AREA OF 717.319 ACRES LESS EXCLUSION (BOISE STATION) (aka TMK: 3/6-8-002: 025) OF 0.689 ACRE THEREBY LEAVING A NET AREA OF 716.630 ACRES.

SUBJECT, HOWEVER, to Easement "SSU-1" (20-Ft. Wide) for Sanitary sewer and Utility Purposes in favor of Lot 2-B-2-B and being more particularly described by the attached description.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement 8 (100-Ft. Wide) for Electrical Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 11411 page 135 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement 9 (100-Ft. Wide) for Electrical Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 11411 page 135.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement 18 for Electrical Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 11411 page 135 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement 9B for Electrical Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 21857 page 361 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-1" (75-Ft. Wide) for Electrical and Telephone Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. A-54080020 and as shown on File Plan 1172.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-2" (75-Ft. Wide) for Electrical and Telephone Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. A-54080020 and as shown on File Plan 1172.

ALSO SUBJECT, HOWEVER, to existing Easement "E-3" for Electrical Sub-Station Purposes being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. A-54080020 and as shown on File Plan 1172.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-4" (75-Ft. Wide) for Electrical and Telephone Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. A-54080020 and as shown on File Plan 1172.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-4-A" (75-Ft. Wide) for Electrical Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 11411 page 135 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-T-1" (75-Ft. Wide) for Electrical and Telephone Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 15112 page 268 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-T-1A" (3-Ft. Wide) for Guy and Anchor Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 13956 page 499 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "E-T-1B" (3-Ft. Wide) for Guy and Anchor Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 13956 page 499 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "R-1" (50-Ft. Wide) for Access Road Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. A-54080020 and as shown on File Plan 1172.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "R-U-1" for Roadway and Utility Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. A-54080020 and as shown on File Plan 1172.

ALSO SUBJECT, HOWEVER, to Existing Easement "R-U-2" (50-Ft. Wide) for Road and Utility Purposes and being more particularly described as shown on File Plan 1172.

ALSO SUBJECT, HOWEVER, to Existing Easement "T-1" for Telephone Purposes and being more particularly described as shown on File Plan 1172.

ALSO SUBJECT, HOWEVER, to existing Easement "T-2" (50-Ft. Wide) for Telephone Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. 2005-188908.

ALSO SUBJECT, HOWEVER, to existing Easement "T-3" for Telephone Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. 91-111121 and Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to a portion of Existing Easement "U-3" for Utility Purposes and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii in Liber 13956 page 491 and as Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to Future Corridors (shown with approximate location on the subdivision map) and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. 2005-188910 and Document No. A-54080020.

ALSO SUBJECT, HOWEVER, to future Well Field Sites (shown with approximate location on subdivision map) and being more particularly described as recorded at the Bureau of Conveyances in Honolulu, Hawaii as Document No. 2005-188910 and Document No. A-54080020.



WES THOMAS ASSOCIATES

Chrystal Thomas Yamasaki  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. LS-4331

75-5749 Kalawa Street  
Kailua-Kona, Hawaii 96740-1817  
TMK: 6-8-002: portion 016 (3rd Division)  
May 19, 2017

EASEMENT "SSU-1"  
 (20-FT. WIDE)  
 FOR SANITARY SEWER AND UTILITY PURPOSES  
 OVER AND ACROSS LOT 2-B-2-C  
IN FAVOR OF LOT 2-B-2-B

Land situated along the Northwesterly boundary of Lot 2-B-2-C and on the Easterly side of Pua Melia Street at Waikoloa, South Kohala, Island and County of Hawaii, State of Hawaii.

Being portions of:

Lot 2-B-2-C; and

Royal Patent 5671, Land Commission Award 8521-B, Apana 1 to G. D. Hueu.

Beginning at the Northwesterly corner of this easement, being also the Northwesterly corner of Lot 2-B-2-C and a point on the Easterly side of Pua Melia Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 8,167.53 feet North and 3,300.58 feet West and running by azimuths measured clockwise from True South:

- |    |              |  |
|----|--------------|--|
| 1. | 259° 46'     | 339.49 feet along Lot 2-B-1 to a point;                      |
| 2. | 291° 44' 07" | 37.77 feet along Lot 2-B-2-B of this subdivision to a point; |
| 3. | 79° 46'      | 382.77 feet along the remainder of Lot 2-B-2-C to a point;   |

Thence, from a tangent azimuth of 200° 08' 20" following along the Easterly side of Pua Melia Street on a curve to the left with a radius of 630.00 feet, the chord azimuth and distance being:

4. 199° 05' 44.5" 22.94 feet to the point of beginning and containing an area of 7,220 Square Feet.

WES THOMAS ASSOCIATES



*Chrystal Thomas Yamasaki*

Chrystal Thomas Yamasaki  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. LS-4331

75-5749 Kalawa Street  
Kailua-Kona, Hawaii 96740-1817  
TMK: 6-8-002: portion 016 (3rd Division)  
May 19, 2017



2010 JUN -4 P 2: 25



BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the matter of the Petition of  
  
HALE MUA PROPERTIES, LLC  
  
To Amend the Land Use District  
Boundary of Certain Lands Situated at  
Waiehu, Island of Maui, State of Hawai'i,  
Consisting of 240.087 Acres from the  
Agriculture and Rural Districts to the  
Urban District, Tax Map Key No. 3-3-  
002:001 (portion)

DOCKET NO. A05-755  
  
ORDER TO SHOW CAUSE; EXHIBIT  
"A"; CERTIFICATE OF SERVICE

ORDER TO SHOW CAUSE

AND

CERTIFICATE OF SERVICE

This is to certify that this is a true and correct  
copy of the document on file in the office of the  
State Land Use Commission, Honolulu, Hawai'i

6/4/18 by

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Executive Officer



LAND USE COMMISSION  
STATE OF HAWAII

2018 JUN -4 P 2: 25

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the matter of the Petition of  
HALE MUA PROPERTIES, LLC

To Amend the Land Use District  
Boundary of Certain Lands Situated at  
Waiehu, Island of Maui, State of Hawai'i,  
Consisting of 240.087 Acres from the  
Agriculture and Rural Districts to the  
Urban District, Tax Map Key No. 3-3-  
002:001 (portion)

DOCKET NO. A05-755

ORDER TO SHOW CAUSE; EXHIBIT  
"A"; CERTIFICATE OF SERVICE

ORDER TO SHOW CAUSE

AND

CERTIFICATE OF SERVICE



LAND USE COMMISSION  
STATE OF HAWAII

2018 JUN -4 P 2: 25

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

In the matter of the Petition of

HALE MUA PROPERTIES, LLC

To Amend the Land Use District  
Boundary of Certain Lands Situated at  
Waiehu, Island of Maui, State of Hawai'i,  
Consisting of 240.087 Acres from the  
Agriculture and Rural Districts to the  
Urban District, Tax Map Key No. 3-3-  
002:001 (portion)

DOCKET NO. A05-755

ORDER TO SHOW CAUSE; EXHIBIT  
"A"; CERTIFICATE OF SERVICE

**ORDER TO SHOW CAUSE**

TO: HALE MUA, LLC ("Petitioner"),

YOU ARE HEREBY COMMANDED, under the authority of section 205-4, Hawai'i Revised Statutes ("HRS"), and section 15-15-93, Hawai'i Administrative Rules ("HAR"), to appear before the Land Use Commission, State of Hawai'i ("Commission"), at the Maui Arts and Cultural Center – Haynes Room, on July 25, 2018, at 9:00 am, to show cause as to why that certain land at Waiehu, County of Maui, Tax Map Key No. 3-3-002:001 (portion), covering approximately 240.087 acres of land referred to as the Subject Area, and approximately identified on Exhibit "A", attached hereto and incorporated herein, should not revert to its former land use classification or be changed to a more appropriate classification.

The Commission has reason to believe that you have failed to perform according to the conditions imposed and to the representations and commitments made to the Commission in obtaining reclassification of the Subject Area. The conditions of the Decision and Order which may have been violated or not been met include, but may not be limited to the following:

1. Condition 1 Affordable Housing;
2. Condition 3 Public School Facilities;
3. Condition 5 Transportation Improvements;
4. Condition 19 Annual Reports;
5. Condition 21 Evidence Clear Title;
6. Condition 24 Notice of Imposition of Conditions; and,
7. Condition 25 Recordation of Conditions;

Section 205-4, HRS, authorizes the Commission to impose conditions necessary to “assure substantial compliance with representations made by the petitioner in seeking a boundary change” and that “absent substantial commencement of use of the land in accordance with such representations, the [C]ommission shall issue and serve upon the party bound by the condition an order to show cause why the property should not be revert to its former land use classification or be changed to a more appropriate classification.”

Accordingly, the Commission will conduct a hearing on this matter in accordance with the requirements of Chapter 91, HRS, and subchapters 7 and 9 of chapter 15-15, HAR. All parties in this docket shall present testimony and exhibits to the Commission as to whether Petitioner has failed to perform according to representations made in seeking the land use reclassification.

Any party may retain counsel if the party so desires.

Dated: Honolulu, Hawai'i, this 4th day of June,  
2018, per motion on May 9, 2018.

APPROVED AS TO FORM

LAND USE COMMISSION  
STATE OF HAWAII

Randall S. Ashiyama  
Deputy Attorney General

By [Signature]  
ARNOLD WONG  
Chairperson and Commissioner

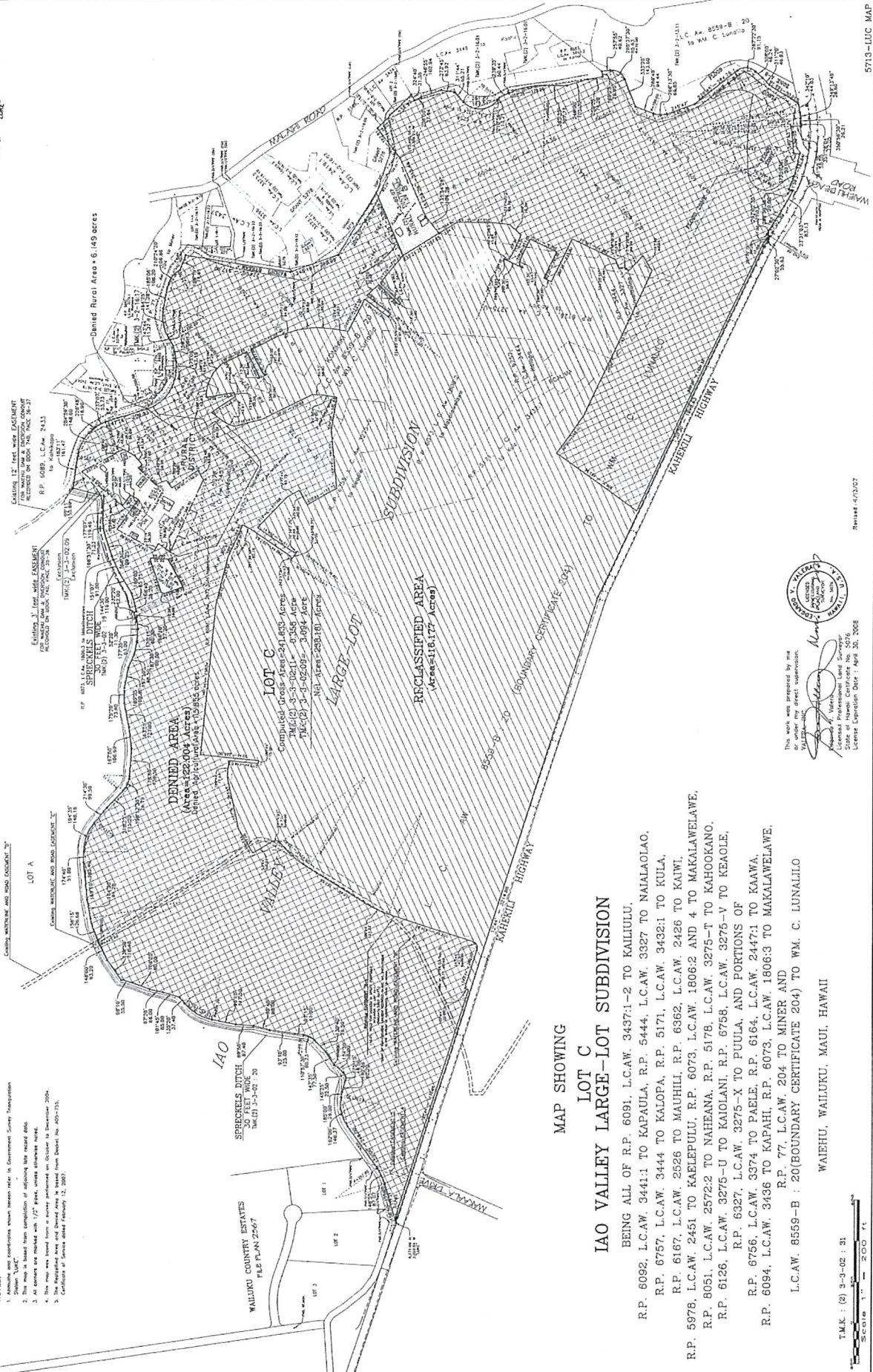
Filed and effective on:

6/4/2018

Certified by:

[Signature]  
DANIEL E. ORODENKER  
Executive Officer

SCALE: 1" = 100' TRUE NORTH  
MAGNETIC 1" = 100'



**NOTES:**  
 1. All bearings and coordinates shown herein refer to Government Survey Triangulation.  
 2. This map is based on compilation of adjoining lots noted above.  
 3. All corners are marked with 1/2" pipe, unless otherwise noted.  
 4. This map was filed with a survey performed on October 12, 2004.  
 5. The Reclassified Area and Denied Area is based on Decree No. 809-235.  
 Conditions of Survey dated February 12, 2002.

**MAP SHOWING  
 LOT C  
 IAO VALLEY LARGE-LOT SUBDIVISION**

BEING ALL OF R.P. 6091, L.C.A.W. 3437:1-2 TO KAILIULU,  
 R.P. 6092, L.C.A.W. 3441:1 TO KAPAUOLA, R.P. 5444, L.C.A.W. 3327 TO NAIALAOLAO,  
 R.P. 6757, L.C.A.W. 3444 TO KALOFA, R.P. 5171, L.C.A.W. 3432:1 TO KULA,  
 R.P. 6167, L.C.A.W. 2526 TO MAUHILI, R.P. 6362, L.C.A.W. 2426 TO KAIWI,  
 R.P. 5978, L.C.A.W. 2451 TO KALEPULU, R.P. 6073, L.C.A.W. 1806:2 AND 4 TO MAKALAWELAWA,  
 R.P. 8051, L.C.A.W. 2572:2 TO NAHEANA, R.P. 5178, L.C.A.W. 3275-T TO KAHOOKANO,  
 R.P. 6126, L.C.A.W. 3275-U TO KAIOLANI, R.P. 6758, L.C.A.W. 3275-V TO KEAOLE,  
 R.P. 6327, L.C.A.W. 3275-X TO PUULA, AND PORTIONS OF  
 R.P. 6756, L.C.A.W. 3274 TO PAELE, R.P. 6164, L.C.A.W. 2447:1 TO KAAWA,  
 R.P. 6094, L.C.A.W. 3436 TO KAPAHI, R.P. 6073, L.C.A.W. 1806:3 TO MAKALAWELAWA,  
 R.P. 77, L.C.A.W. 204 TO MINER AND  
 L.C.A.W. 8559-B : 20 (BOUNDARY CERTIFICATE 204) TO WM. C. LUNAJILO  
 WAIHUU, WAILUKU, MAUI, HAWAII

This map was prepared by me  
 or under my direct supervision.  
 Y. WAKAYAMA  
 Licensed Professional Land Surveyor  
 License No. 1000  
 License Expiration Date: April 30, 2008

T.M.K. : (2) 3-3-02 : 31  
 SCALE: 1" = 200' ±  
 Revised 4/23/07

BEFORE THE LAND USE COMMISSION  
STATE OF HAWAII

LAND USE COMMISSION  
STATE OF HAWAII

In the matter of the Petition of  
  
HALE MUA PROPERTIES, LLC

DOCKET NO. ~~2018 JUN 15~~ **P 2: 25**

CERTIFICATE OF SERVICE

To Amend the Land Use District Boundary  
of Certain Lands Situated at Waiehu, Island  
of Maui, State of Hawai'i, Consisting of  
240.087 Acres from the Agriculture and  
Rural Districts to the Urban District, Tax  
Map Key No. 3-3-002:001 (portion)

CERTIFICATE OF SERVICE

I hereby certify that a certified copy of the ORDER TO SHOW CAUSE, was served upon the following by depositing the same in the U. S. Postal Service by registered or certified mail as noted:

DEL.           LEO ASUNCION, Director  
                  Office of Planning  
                  P. O. Box 2359  
                  Honolulu, Hawai'i 96804-2359

DEL.           DAWN TAKEUCHI APUNA, Esq.  
                  Deputy Attorney General  
                  425 Queen Street  
                  Honolulu, Hawai'i 96813  
                  Attorney for State Office of Planning

MAIL.          WIL SPENCE, Director  
                  County of Maui  
                  Planning Department  
                  2200 Main Street  
                  One Main Plaza, Suite 315  
                  Wailuku, Hawai'i 96793

MAIL. PATRICK K. WONG, Esq.  
Department of Corporation Counsel  
200 South High Street, room 322  
Wailuku, Hawai'i 96793  
Attorney for County of Maui  
DEPARTMENT OF PLANNING

CERT. RANDALL SAKUMOTO, Esq.  
McCorriston Miller Mukai MacKinnon LLP  
P.O. Box 2800  
Honolulu, Hawai'i 96803-2800  
Attorney for Petitioner  
HALE MUA, LLC

CERT. MURRAY M. SMITH, P.E.  
CHRIS BROWN  
JLP & Associates/Southwest 7 LLC  
P.O. Box 11255  
Lāhainā, Hawai'i 96761  
Designated Representatives of Southwest 7, LLC

CERT. THOMAS E.D. MILLSPAUGH, Venable LLP  
750 E. Pratt Street, Suite 900  
Baltimore, MD 21202  
Representative of Southwest 7, LLC and Estate of Robert Cooper

MAIL. JOHN L. PUND, Jr.  
JLP & Associates LLC  
The Ellis House  
3837 West Chester Pike  
Newtown Square, PA 19073

Dated: Honolulu, Hawai'i, 6/4/2018

  
\_\_\_\_\_  
DANIEL E. ORODENKER  
Executive Officer



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI'I

In the Matter of the Petition Of

WAIKOLOA MAUKA, LLC

To Amend the Agricultural Land Use District  
Boundary Into the Rural Land Use District for  
Approximately 731.581 Acres in South Kohala  
District, Island of Hawaii, Tax Map Key No.  
(3) 6-8-02:016 (por.)

DOCKET NO. A06-767

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I hereby certify that a filed copy of the Motion to Continue Hearing on Order to Show Cause was served upon the following by either hand delivery or depositing the same in the U.S. Postal Service by regular or certified mail as noted below:

MICHAEL YEE, DIRECTOR Department of Planning, County of Hawai'i Aupuni Center 101 Pauahi Street, Suite 3 Hilo, HI 96720	U.S. MAIL, POSTAGE PREPAID
JOSEPH K. KAMELAMELA, ESQ. Corporation Counsel Department of the Corporation Counsel County of Hawai'i Hilo Lagoon Centre, 101 Aupuni Street, Unit 325 Hilo, HI 96720  Attorneys for County of Hawai'i Department of Planning	U.S. MAIL, POSTAGE PREPAID
LEO R. ASUNCION, JR. Director Office of Planning, State of Hawai'i 235 S. Beretania Street, Suite 600 Honolulu, HI 96813	HAND DELIVERY

<p>DAWN TAKEUCHI APUNA, ESQ. Deputy Attorney General Department of the Attorney General, State of Hawai'i 425 Queen Street Honolulu, HI 96813</p> <p>Attorneys for Office of Planning, State of Hawai'i</p>	HAND DELIVERY
<p>Mr. Kevin C. Kellow Manager Waikoloa Mauka, LLC 1200 S. Brand Blvd. #202 Glendale, CA 91204</p>	U.S. MAIL, POSTAGE PREPAID
<p>Parker Ranch, Inc. Attn: Nahua Guilloz 66-1304 Mamalahoa Hwy Kamuela, HI 96743</p>	U.S. MAIL, POSTAGE PREPAID
<p>Time Warner Entertainment Company, L.P., dba Sun Cablevision 74-5605 Luhia Street Kailua-Kona, HI 96745</p> <p>and</p> <p>CSC Services of Hawaii, LLC 1600 Pauahi Tower 1003 Bishop St. Honolulu, HI 96813</p>	<p>U.S. MAIL, POSTAGE PREPAID</p> <p>HAND DELIVERY</p>
<p>Edwin DeLuz Trucking &amp; Gravel, L.L.C. P.O. Box 9 Kamuela, HI 96743</p>	U.S. MAIL, POSTAGE PREPAID
<p>Hawaii Electric Light Company, Inc. ATTN Corporate Secretary P.O. Box 2750 Honolulu, HI 96840</p>	U.S. MAIL, POSTAGE PREPAID
<p>Transcontinental Development Co. HC02 P.O. Box 5050 Waikoloa, HI 96743</p>	U.S. MAIL, POSTAGE PREPAID

Waikoloa Village Association c/o Roger Wehrsig 68-1792 Melia St. Waikoloa, HI 96738	U.S. MAIL, POSTAGE PREPAID
GTE Hawaiian Telephone Company Incorporated c/o Hawaiian Telcom, Inc. Legal Department 1177 Bishop Street, Suite 15 Honolulu, HI 96813	U.S. MAIL, POSTAGE PREPAID
Waikoloa Water Co., Inc., dba West Hawaii Water Company P.O. Box 384809 Waikoloa, HI 96738	U.S. MAIL, POSTAGE PREPAID
Waikoloa Sanitary Sewer Co., Inc., dba West Hawaii Sewer Company P.O. Box 384809 Waikoloa, HI 96738	U.S. MAIL, POSTAGE PREPAID
Waikoloa Development Company Co. c/o Waikoloa Land Company 150 Waikoloa Beach Dr. Waikoloa, HI 96738	U.S. MAIL, POSTAGE PREPAID

DATED: Honolulu, Hawai'i, July 24, 2018.

  
 \_\_\_\_\_  
 STEVEN S.C. LIM  
 DEREK B. SIMON

Attorneys for Petitioner  
 WAIKOLOA HIGHLANDS, INC.