

# CARLSMITH BALL LLP

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August 15, 2018

LAND USE COMMISSION  
STATE OF HAWAII

2018 AUG 16 A 9:46

## VIA HAND DELIVERY

Daniel E. Orodenker  
Executive Officer  
State of Hawaii Land Use Commission  
State Office Tower  
Leiopapa A Kamehameha Building  
235 South Beretania Street, Room 406  
Honolulu, Hawaii 96813

Re: **Combined 2017 and 2018 Annual Report - Docket No.: A06-767**  
Successor Petitioner: Waikoloa Highlands, Inc., a Colorado corporation  
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  
Tax Map Key No. (3) 6-8-002:016 (por.)

Dear Mr. Orodenker:

By Findings of Fact, Conclusions of Law, and Decision and Order filed, effective and dated June 10, 2008, in Docket No. A06-767, the State Land Use Commission ("**Commission**") reclassified approximately 731.581 acres of land from the Agricultural District to the Rural District located in South Kohala, Island of Hawaii, being TMK No.: (3) 6-8-002:016 (the "**Property**").

We understand that the last annual report in this Docket was submitted to the Commission in 2016. We acknowledge that no Annual Progress Report was submitted in 2017, and apologize for not providing the Commission with an update on the development of the Property sooner. On behalf of our client, Waikoloa Highlands, Inc., a Colorado corporation, ("**WHI**"), successor in interest to Waikoloa Mauka, LLC ("**WML**"), the original Petitioner in said Docket, we hereby submit the Combined 2017 and 2018 Annual Report pursuant to Condition 21. The enclosed matrix outlines the Petitioner's compliance with the conditions of approval in this Docket.

For years, WML and WHI's efforts to advance the development of the Project were significantly hindered—if not entirely undermined—by the alleged gross mismanagement and fraud committed by the former director of both entities, Stefan Martirosian, who was solely responsible for overseeing all aspects of the Project. WHI has since gone to great lengths to correct course, both internally and with respect to the Project, including hiring new management and engaging a Hawaii based project manager with extensive development experience. Armed with new management, WHI is competent and committed to developing the Project through completion.

Pursuant to the Order to Show Cause filed and effective July 3, 2018 in this Docket, WHI will appear before the Commission to show cause as to why the Property should not revert to its former land use classification or changed to a more appropriate classification. On August 8, 2018, WHI filed its Statement of Position on Order to Show Cause with the Commission. Accordingly, subject to the outcome of the pending Order to Show Cause hearing in this Docket, WHI will either be seeking a time extension of the lapsed deadline to complete build out of the Project, or will revise the development of the Property.

We trust that the foregoing satisfies the annual reporting requirement of the subject Docket. Please feel free to contact me should you have any questions on this submittal. Thank you for your consideration.

Very truly yours,



Steven S.C. Lim

SSL:KYL

Enclosure

xc with enclosure: Client

Joel LaPinta

Leo R. Asuncion, Jr., Director, Office of Planning

Michael Yee, County of Hawaii Planning Director

Ronald Kim, Esq., Deputy Corporation Counsel

Dawn Takeuchi Apuna, Esq., Deputy Attorney General

**State Land Use Docket No. A06-767**  
 Successor Petitioner Waikoloa Highlands, Inc. (the "Petitioner")  
 Combined 2017 and 2018 Condition Compliance Matrix

No.	Condition	Status	Condition
1.	Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission. Failure to develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.	On-going	Petitioner acknowledges and shall comply with this condition.
2.	Petitioner shall develop the Petition Area and complete buildout of the Project no later than ten (10) years from the date of Commission's decision and order. For purposes of the Commission's decision and order, "buildout" means completion of the backbone infrastructure to allow for the sale of individual lots.	On-going	<p>On 03/01/07, the fifth revised preliminary plat map ("<b>PPM</b>") was submitted to the Planning Department (<b>Exhibit 1 - PPM</b>). The Planning Department by letter dated 04/05/07 issued the Third Revised Tentative Subdivision Approval letter (<b>Exhibit 2</b>).</p> <p>By letter dated 03/18/16, the Planning Department granted a second administrative time extension until 03/13/18 within which to submit the final plat map and obtain Final Subdivision Approval ("<b>FSA</b>") for not less than 50 lots, and until 03/13/23 for the remaining project lots (<b>Exhibit 3</b>).</p> <p>Assuming a favorable outcome for the LUC proceeding on the OSC, the Petitioner will apply to the County for a 5-year extension of time to obtain FSA for Phase 1, and a 10-year extension of time to obtain FSA for the remaining Phase(s) of the Project.</p>
3.	If Petitioner fails to complete buildout of the Project or secure a bond for the completion thereof within ten (10) years from the date of the Commission's decision and order, the Commission may, on its own motion or at the request of any party or interested person, file an Order to Show Cause and require Petitioner to appear before the Commission to explain why the Petition Area should not revert to its previous Agricultural classification.	On-going	N/A.

**State Land Use Docket No. A06-767**  
Successor Petitioner Waikoloa Highlands, Inc. (the "Petitioner")  
Combined 2017 and 2018 Condition Compliance Matrix

No.	Condition	Status	Condition
4.	Petitioner shall provide drinking and irrigation water source, storage, and transmission facilities and improvements to accommodate development of the Petition Area, to the satisfaction of the County of Hawaii and appropriate State agencies. Petitioner shall notify the Commission of changes to its proposed water source for the Project's drinking water and irrigation water needs.	On-going	Petitioner acknowledges and shall comply with this condition.
5.	Petitioner shall implement water conservation measures as may be required by the applicable provisions of the Hawaii County Code, and shall implement BMPs, such as use of indigenous and drought tolerant plants and turf and incorporate such measures in the Project's landscape planting. Petitioner shall require the use of native drought tolerant plants on the Petition Area in the Conditions, Covenants and Restrictions ("CC&Rs") associated with the Project or in the deed restrictions for each lot in the Project. Petitioner shall provide a copy of the complete CC&Rs to the Commission within 30 days after the CC&Rs become enforceable.	On-going	Petitioner acknowledges and shall comply with this condition.
6a.	<p>Petitioner shall reach an agreement with the State DOT for the construction of the following improvements related to the Project:</p> <p>For the intersection, Waikoloa Road and Queen Ka'ahumanu Highway, the State DOT has requested that the Petitioner include improvements to make the Makai bound approach from Waikoloa Road have one left-turn only lane, one through/left-turn lane, and a right turn lane with the appropriate signalization. In addition, an acceleration lane would be added to Queen Ka'ahumanu Highway to accommodate the additional left turn lane;</p>	<b>Satisfied</b>	The Waikoloa Road/Queen Ka'ahumanu Highway intersection improvements were undertaken and completed by the Hilton Grand Vacation Corporation for its additional time share operations. Therefore reaching an agreement with State DOT is moot.

**State Land Use Docket No. A06-767**  
Successor Petitioner Waikoloa Highlands, Inc. (the "Petitioner")  
Combined 2017 and 2018 Condition Compliance Matrix

No.	Condition	Status	Condition
6b.	Petitioner will provide a left-turn shelter lane on Mamalahoa Highway from Waikoloa Road, and two advanced warning lights, one located on mauka-bound Waikoloa Road, and the other on southbound Mamalahoa Highway. Prior to final subdivision approval, Petitioner will enter into a Memorandum of Understanding with the State DOT outlining the proposed improvements. Petitioner will provide the Commission with a copy of the fully executed agreement within 30 days from the date the agreement is fully executed. Petitioner will also comply with Condition C of Ordinance No. 07-127, as may be amended from time to time, which fulfills the Petitioner's transportation obligations to the County in relation to the Project.	On-going	On 09/27/07, Project engineer R.M.Towill Corporation submitted to the State DOT, the budgetary estimates for the Mamalahoa Highway and Waikoloa Road intersection improvements ( <b>Exhibit 4</b> ).
7.	Petitioner shall use shielded or low sodium streetlights within the Project to avoid impacts to flight birds and other population.	On-going	Petitioner acknowledges and shall comply with this condition.
8.	Petitioner shall preserve native wiliwili trees and kāwelu grassland assemblages located outside of the construction and grading areas, if practicable, consistent with the development of the Project.	On-going	Petitioner acknowledges and shall comply with this condition.
9.	Petitioner shall provide affordable housing opportunities for residents in the State of Hawaii in accordance with applicable affordable housing requirements of the County. The location and distribution of the affordable housing or other provisions for affordable housing shall be under such terms as may be mutually agreeable between Petitioner and the County. Petitioner shall provide the Commission with a fully executed copy of the affordable housing agreement within 30 days of the execution of the agreement.	<b>Satisfied</b>	<p>The Petitioner and the County Housing and Community Development ("OHCD") entered into the affordable housing Agreement dated 12/01/16 (<b>Exhibit 5</b>). FSA under SUB-17-1716 (which created the affordable housing site at TMK: (3) 6-8-002:057) was approved by the Planning Department on 05/15/17.</p> <p>By Deed, the affordable housing site property was conveyed to Plumeria at Waikoloa, LLC and recorded in the Bureau of Conveyances on 01/29/18, as Document No. A-66030880 (<b>Exhibit 6</b>). The Petitioner and OHCD executed the Release in full satisfaction of the Agreement (<b>Exhibit 7</b>).</p>

**State Land Use Docket No. A06-767**  
Successor Petitioner Waikoloa Highlands, Inc. (the "Petitioner")  
Combined 2017 and 2018 Condition Compliance Matrix

No.	Condition	Status	Condition
10.	In the event that historic resources, including human skeletal remains, lava tubes and lava blisters/bubbles are identified during the construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division ("SHPD"), Hawai'i Island Section, shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites, such as artifacts, marine shell concentrations, charcoal deposits, stone platforms, paving, and walls not previously identified in the studies referred herein, are discovered during the course of construction of the Project, then all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from SHPD that mitigative measures have been implemented to its satisfaction.	On-going	Petitioner acknowledges and shall comply with this condition.
11.	Petitioner shall consult and comply with all SHPD recommendations in regards to the treatment of Site 22.	On-going	Petitioner acknowledges and shall comply with this condition.
12.	Petitioner shall prepare a drainage study and the recommended drainage system shall be constructed, meeting with the approval of the County of Hawai'i Department of Public Works.	On-going	The Petitioner's project engineer RMTC submitted the <i>Preliminary Drainage Report for Waikoloa Highlands, Increments 1 and 2</i> to DPW on 06/22/07 ( <b>Exhibit 8</b> - transmittal letter).
13.	Petitioner shall fund and construct adequate wastewater treatment, transmission and disposal facilities, as determined by the County of Hawai'i Department of Environmental Management and the State Department of Health.	On-going	Petitioner acknowledges and shall comply with this condition.
14.	Petitioner shall develop a solid waste management plan in conformance with the Integrated Solid Waste Management Act, HRS Chapter 342G. The solid waste management plan shall be approved by the County of Hawai'i Department of Environmental Management and the DOH.	On-going	Petitioner acknowledges and shall comply with this condition.

**State Land Use Docket No. A06-767**  
 Successor Petitioner Waikoloa Highlands, Inc. (the "Petitioner")  
 Combined 2017 and 2018 Condition Compliance Matrix

No.	Condition	Status	Condition
15.	Petitioner shall, on a fair-share basis, fund and construct adequate solar-powered civil defense measures serving the Petition Area as determined by the State of Hawai'i, Department of Defense, Office of Civil Defense, and the County of Hawai'i, Civil Defense Agency.	On-going	Petitioner acknowledges and shall comply with this condition.
16.	Petitioner shall preserve any established access rights of native Hawaiians to undeveloped lands, who have customarily and traditionally used the Petition Area to exercise subsistence cultural, and religious practices or for access to other areas.	On-going	Petitioner acknowledges and shall comply with this condition.
17.	Petitioner shall participate in an air quality monitoring program if required by the DOH.	On-going	Petitioner acknowledges and shall comply with this condition.
18.	Petitioner shall implement applicable Best Management Practices ("BMPs") applicable to each proposed land use in order to minimize infiltration and runoff from construction and vehicle operations, reduce or eliminate soil erosion and ground water pollution, and formulate dust control measures to be implemented during and after the development process in accordance with the State Department of Health guidelines.	On-going	Petitioner acknowledges and shall comply with this condition.
19.	Petitioner shall implement energy conservation and sustainable design measures, that are feasible and practicable, such as use of solar energy and solar heating and the standards and guidelines promulgated by the Building Industry Association of Hawai'i, the U.S. Green Building Council, the Hawai'i Commercial Building Guidelines for Energy Efficiency, the Guidelines for Sustainable Building Design in Hawai'i, and the applicable county building codes, as amended into the design and construction of the Project and the structures within the Petition Area.	On-going	Petitioner acknowledges and shall comply with this condition.

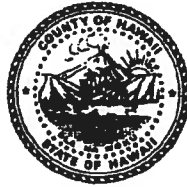
**State Land Use Docket No. A06-767**  
**Successor Petitioner Waikoloa Highlands, Inc. (the "Petitioner")**  
**Combined 2017 and 2018 Condition Compliance Matrix**

No.	Condition	Status	Condition
20.	Petitioner shall give notice to the Commission of any intent to sell, lease assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area, prior to development of the Petition Area.	On-going	Status letter dated 06/08/18 from Steven S.C. Lim, counsel for Petitioner.
21.	Petitioner shall timely provide without any prior notice, annual reports to the Commission, OP, and County in connection with the Petition Area and Petitioner's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executed Officer of the Commission.	On-going	Petitioner files its Combined 2017 and 2018 annual report in compliance with this condition.
22.	The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon the provision of adequate assurance of satisfaction of these conditions by Petitioner.	On-going	Petitioner acknowledges and shall comply with this condition.
23.	Within seven days of issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall (a) record with the Bureau of Conveyances a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.	<b>Satisfied</b>	<i>Notice of Imposition of Conditions by the Land Use Commission</i> was recorded at the Bureau of Conveyances on 06/19/08, as Document No. 2008-100396.
24.	Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to HAR§15-92. Such conditions shall run with the land, pursuant to HRS§205-4(g).	<b>Satisfied</b>	<i>Declaration of Conditions Applicable to an Amendment of District Boundary From Agricultural to Rural</i> was recorded at the Bureau of Conveyances on 08/14/08, as Document No. 2008-127524.





Harry Kim  
Mayor



Christopher J. Yuen  
Director

Brad Kurokawa, ASLA  
LEED® AP  
Deputy Director

**County of Hawaii**  
**PLANNING DEPARTMENT**

101 Pauahi Street, Suite 3 • Hilo, Hawaii 96720-3043  
(808) 961-8288 • FAX (808) 961-8742



April 5, 2007

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

Dear Mr. Fuke:

**THIRD REVISED TENTATIVE APPROVAL  
FIFTH REVISED PRELIMINARY PLAT MAP  
SUBDIVIDER: WAIKOLOA MAUKA, LLC**

Proposed Subdivision of Lot 2-B,

Being a portion of Lot 2 of "Waikoloa Development" (File Plan 1172),

Being also a portion of Royal Patent 5671, Land Commission Award 8521-B, Apana 1,

**Into Phase I – Lots 1 to 149, Inclusive and Roadway Lot R-1;**

**Phase II – Lots 159 to 398, Inclusive and Roadway Lot R-2;**

**Lots 399 to 404, Inclusive; and Lot 2-B-1**

At Waikoloa, South Kohala, Island of Hawaii, Hawaii

TMK: 6-8-002:016 (SUB-89-000179)

Please be informed that a THIRD REVISED TENTATIVE APPROVAL of the FIFTH REVISED PRELIMINARY PLAT MAP dated March 1, 2007, is hereby granted with modifications and conditions.

The subdivider is now authorized to prepare detailed drawings of the subdivision plan in accordance with Chapter 23, Subdivision Control Code, County of Hawaii, as modified. Before final approval can be granted, the following conditions must be met:

**1) Water System**

- a) Provide a water system designed to deliver water at adequate pressure and volume under peak-flow conditions in accordance with the Water System Standards, State of Hawaii. The water system shall include, but not be limited to, the installation of extensive improvements and additions, including source, storage, transmission, booster pumps, and distribution facilities.
- b) Submit water system construction plans for approval by the Department of Water Supply.
- c) Pay a fee of four-tenths of one percent of the estimated cost for the construction of the water system, but not less than \$50.00, to cover the cost for plan review, testing, and inspection.

**APR 09 2007**

2) Drainage

- a) Identify all watercourses and drainage ways, or any areas subjected to inundation by a 100-year storm and encumber with drainage easements.
- b) Additional storm runoff due to development shall be disposed within the subdivision and shall not be discharged onto adjacent properties or roadways. For planned drywells, satisfy Department of Health (DOH) drywell requirements, including issuance of an underground injection control (UIC) permit to the subdivider.

3) Access and Roadway Improvements

- a) Condition C of Change of Zone Ordinance No. 05 157 restricts direct subdivision access onto Waikoloa Road to a single access point. We are aware of the subdivider's current request to amend this condition to permit a second access point on Waikoloa Road at the mauka extent of the proposed subdivision. Should the County Council approve the requested amendment, a sixth revised preliminary plat map should be submitted to this office reflecting the second permitted access point onto Waikoloa Road.
- b) Planned Unit Development Permit No. 42 (PUD 42) allowed roadways within the proposed subdivision shall be constructed with a minimum pavement width of 24 feet with grassed shoulders and swales within a minimum right-of-way of 50 feet for the local streets and a 60-foot wide right-of-way for the main subdivision access road. Construct subdivision roads as approved by PUD 42 and in a manner meeting with the approval of the Department of Public Works.
- c) We note within our files that we never responded to a January 14, 2005 request for an extension of time by which to comply with PUD 42. We apologize for this oversight. This request, by Thos Rohr of Waikoloa Development, requests an extension until March 21, 2015 by which to secure final subdivision approval as required by Condition C. Given the amount of time that has already lapsed since the original approval of PUD 42 on December 10, 1991, we think the requested extension is excessive. Therefore, we are granting an extension of time to Condition C until March 21, 2010, by which to secure Final Subdivision Approval of the proposed subdivision.
- d) All subdivision lots shall have adequate sight distance for safe access onto the proposed subdivision roads.
- e) Provide common access easements encumbering the side-by-side poles of flag lots. Identify easement by azimuths/distances on the final plat map.
- f) Provide 10-foot wide "no vehicular access" planting screen easement fronting Waikoloa Road, exclusive of Road Lots R-1 and R-2.
- g) Install streetlights/signs/pavement markings as required by the Traffic Division, Department of Public Works. Installation of street signs and street lights shall be consistent with representations depicted in the Highlands Golf Estates Planned Unit Development Application dated June 1991 and approved by PUD 42, which allowed for the use of alternative street signage fixtures and the installation of street lights at intersections only.
- h) Roadway design/layout including allowable street grades and minimum sight distance shall conform to Section 23-50 of the Subdivision Code.

- i) Submit proposed street names conforming to the adopted street naming policy of the County of Hawaii.
  - j) Submit construction plans and drainage report for review and approval of appropriate agencies.
  - k) The intersection of Waikoloa Road-Pua Melia Street-Paniolo Avenue shall be channelized and signalized along with other improvements required by Condition C of Change of Zone Ordinance No. 05 157 and based on a current Traffic Impact Analysis Report (TIAR) to be conducted by the subdivider.
- 4) Wastewater
- a) The Department of Health requires that the proposed subdivision be serviced by a wastewater treatment works. Sewage flow calculations and the proposed design plans for the sewage treatment and disposal system needs to be prepared by a Registered Professional engineer by licensed by the State of Hawaii. These reports must be submitted to the Department of Health Wastewater Branch in Honolulu.
  - b) Construct a wastewater treatment works that will service the needs of the proposed subdivision in accordance with the requirements of the State Department of Health.
- 5) All easements affecting proposed lots shall be identified for its purpose and to which proposed lot(s) and/or grantee(s) the easement is in favor of. This shall be shown on the final plat map.
- 6) Comply with all conditions of Change of Zone Ordinance No. 05 157 (REZ 678), and any amendments which may occur prior to receipt of final subdivision approval, particularly the following conditions that are stated in part:
- "B. Final subdivision approval for not less than 175 lots shall be secured within ten (10) years [December 15, 2015] from the effective date of this new amendment. Plans for infrastructural improvements, including off-site roadway improvements required in Condition C, shall be submitted in conjunction with construction drawings for final subdivision approval for any portion of the subject property. The applicant shall install and dedicate the traffic signalization improvements required in Condition C prior to the Final Subdivision Approval for more than 350 lots of twenty acres or less, or sooner in the event the warrants for such installation are justified by the director of public works.
  - "C. Access shall meet with the requirements of the Department of Public Works. Direct access to Waikoloa Road shall be limited to one roadway from the project site. Waikoloa Road-Pua Melia Street-Paniolo Avenue intersection shall be channelized and signalized meeting with the requirements of the Department of Public Works. These improvements together with other improvements required by the Department of Public Works based upon a current Traffic Impact Analysis Report shall be provided in conjunction with final subdivision approval of the first Increment or as otherwise provided by Chapter 23 (Subdivision Control).
  - "D. 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, Hawaii County Code relating to Affordable Housing Policy. This requirement shall be approved by the County Housing Agency prior to final subdivision approval.

"H. Before final subdivision approval, applicant must obtain reclassification of the RA-1a zoned area from the State Land Use Commission to the Rural or Urban district.

"I. The applicant shall make its fair share contribution to mitigate the potential regional impacts of the property with respect to parks and recreation, fire, police, solid waste disposal facilities and roads."

6) Comply with the requirements of Planned Unit Development Permit No. 42 (PUD 42), particularly the following:

"B. The development shall conform substantially to the plans as submitted. A deed covenant limiting one single family dwelling per lot shall be incorporated as part of the deed restriction on the properties.

"C. Final approval of the subdivision shall be secured within one year of the date of approval of the PUD. [Note: time extension granted to March 21, 2010]

"D. The roadway and related improvements within the development will remain in private ownership unless it is brought up to County dedicable standards. The applicant shall file a recordable agreement indicating the applicant's liability, indemnification of the County of liability, and other necessary provisions. This agreement shall be developed with the Department of Public Works and the Corporation Counsel's office prior to final subdivision approval. This agreement shall be included within deeds of all future lot owners/purchasers in this development. A recorded copy of this restriction shall be filed with the Planning Department and the Department of Public Works.

"F. Extensions and modifications to the permit shall be subject to the Planning Director's approval."

8-3-07 7) Property Tax Certification. Submit written proof that all taxes and assessments on the property are paid to date.

8) Surveyor's Certification. Place property markers in accordance with the final plat map. Surveyor shall submit certification upon completion.

9) Final Plat Map. Submit **ten (10)** copies of the final plat map prepared in conformity with Chapter 23, Subdivisions, within one year from the date of third revised tentative approval, on or before **April 4, 2008**. If not, third revised tentative approval to the fifth revised preliminary plat map shall be deemed null and void. Only upon written request from the subdivider and for good cause, the director may grant to the subdivider an extension of time within which the subdivider may file the final plat. As part of final plat map submittal, the director request an additional copy of the final plat map be submitted as a ".dwg" or ".dxf" diskette file prepared by CAD software.

10) Time Limit. Subdivider shall complete all requirements specified as conditions for third revised tentative approval of the fifth revised preliminary plat map within three (3) years of said third revised tentative approval, on or before **April 5, 2010**. An extension of not more than two (2) years may be granted by the director upon timely request of the subdivider concurrently with a request for an extension to PUD 42.

Sidney M. Fuke  
Planning Consultant  
Page 5  
April 5, 2007

Please be aware that if at any time during the fulfillment of the foregoing conditions, should concerns emerge such as environmental problems or other problems which were earlier overlooked or not anticipated/accounted for in data/reports available to date, this could be sufficient cause to immediately cease and desist from further activities on the proposed subdivision, pending resolution of the problems. The Planning Director shall confer with the listed officers to resolve the problems and notify you accordingly.

No final approval for recordation shall be granted until all the above conditions have been met.

Land shall not be offered for sale, lease or rent until final approval for recordation of the subdivision is granted by the Planning Director or the proposed subdivision has been issued a preliminary order of registration by the Department of Commerce and Consumer Affairs (DCCA) in accordance with the requirements of Chapter 484, Hawaii Revised Statutes.

There has been considerable legal controversy over subdivisions in the agricultural district, including the recent Kelly, et.al. v. 1250 Oceanside Partners, et.al., Civil No. 00-1-0192K. Because of the state of the law at this time, we recommend that subdividers in the State Land Use Agricultural district consult with, and rely on, independent legal counsel in deciding whether their subdivisions comply with the requirements of Chapter 205, Hawaii Revised Statutes. We also recommend that you advise lot purchasers to consult with, and to rely on, independent legal counsel regarding permissible uses and the effect of Land Use Commission Rule 15-15-25(b), Hawaii Revised Statutes Section 205-4.5, and Hawaii County Planning Department Rule No. 13, on the requirements to build and occupy dwellings on lots within the subdivision.

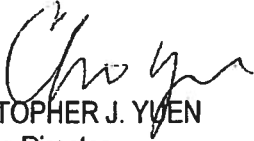
Finally, For the Subdivider's information, the United States Postal Service (USPS) has informed this office of new mail delivery guidelines, which encourages the use of centralized mail delivery equipment. We have enclosed a flyer provided by the USPS. These new mail delivery guidelines must be considered as it may have an effect upon the proposed subdivision depending on the type of centralized mail delivery to be provided. We encourage the Subdivider to contact the local USPS Growth Coordinator at (808) 423-3908. The Subdivider is ultimately responsible to ensure that the proposed subdivision will accommodate the necessary easements or facilities to provide for centralized mail delivery in accordance with USPS mail delivery guidelines.

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

Sidney M. Fuke  
Planning Consultant  
Page 6  
April 5, 2007

Should you have any questions, please feel free to contact Ed Cheplic or Daryn Arai of this department.

Sincerely,



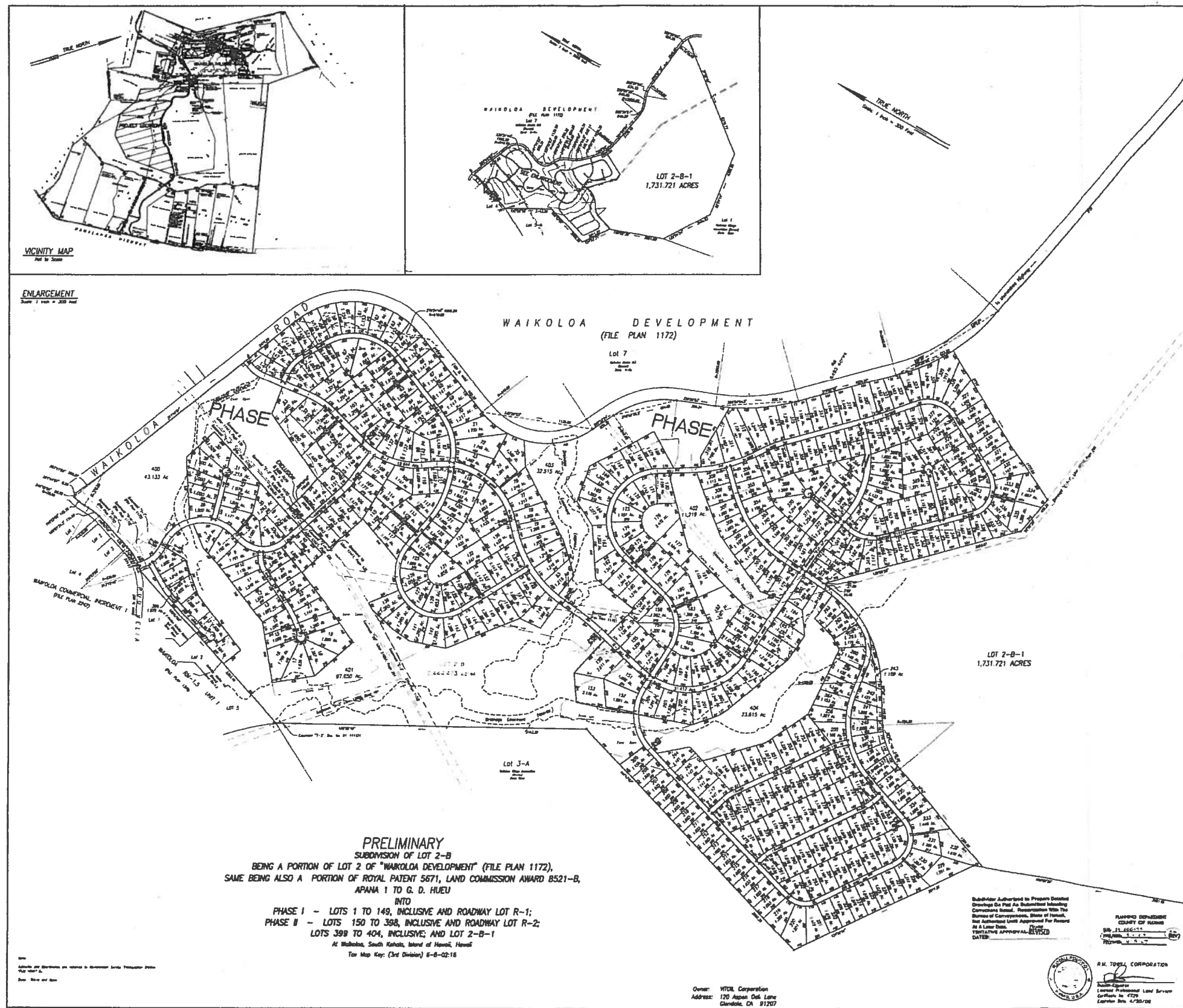
CHRISTOPHER J. YUEN  
Planning Director

DSA:lnm

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Encs: Fifth Revised PPM (03-01-07)  
USPS New Mail Delivery Guidelines

xc: Manager, DWS w/Fifth Revised PPM  
Director, DPW w/Fifth Revised PPM  
District Environmental Health Program Chief, DOH w/Fifth Revised PPM  
District Engineer, DOT w/Fifth Revised PPM  
DPW-ENG-KONA w/Fifth Revised PPM  
Director, DEM w/Fifth Revised PPM  
Stefan Martirosian, Waikoloa Mauka, LLC w/USPS New Mail Delivery Guidelines  
Russell Figueiroa, LPLS, R.M. Towill Corporation  
PUD 42; REZ 678



VICINITY MAP  
Not to Scale

ENLARGEMENT  
Scale 1 inch = 200 feet

WAIKOLOA DEVELOPMENT  
(FILE PLAN 1172)

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 8521-B,  
APANA 1 TO G. D. HUEI  
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  
At Waikoloa, South Kohala, Island of Hawaii, Hawaii  
Tax Map Key: (3rd Division) 8-B-02-16

Subdivider Authorized to Prepare Detailed  
Drawings On Plat As Submitted Including  
Conveyance Record, Resurveying With The  
Bureau of Conveyances, State of Hawaii,  
Not Authorized Until Approved For Record  
At A Later Date.  
TENTATIVE APPROVAL ELIQUED  
DATE:

PLANNING DEPARTMENT  
COUNTY OF HAWAII  
BY: [Signature]  
TITLED: 12-28-78

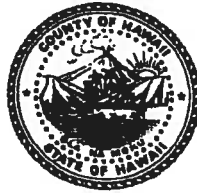


P.M. TORGAL CORPORATION  
[Signature]  
1200 Kalia Road, Suite 400  
Honolulu, Hawaii 96813  
Telephone: 535-1234

Owner: WTOL Corporation  
Address: 120 Kalia Road, Suite 400  
Honolulu, HI 96813



William P. Kenoi  
Mayor



Duane Kanuha  
Director

Joaquin Gamiao-Kunkel  
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

March 18, 2016

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

Dear Mr. Fuke:

**SECOND TIME EXTENSION REQUEST**  
**SUBDIVIDER: WAIKOLOA MAUKA, LLC**

Proposed Subdivision of Lot 2-B-2,

Being a Portion of Lot 2-B,

Further being a Portion of Lot 2 of "Waikoloa Development" (File Plan 1172),

Being also a portion of Royal Patent 5671, Land Commission Award 8521-B, Ap. 1,

Into Phase I - Lots 1 to 149, Inclusive and Roadway Lot R-1;

Phase II - Lots 159 to 398, Inclusive and Roadway Lot R-2;

Lots 399 to 404, Inclusive; and Lot 2-B-1,

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

TMK: 6-8-002:016 (SUB-89-000179)

We apologize for the delay in this communication which follows up on our previous letter dated August 7, 2012. As you are aware, Change of Zone Ordinance No. 13 029 (REZ 678, Docket No. REZ-90-000012) amended previous ordinances relative to the subject property with an effective date of March 13, 2013. **Condition B** of said ordinance now reads:

"Final Subdivision Approval for not less than 50 lots shall be secured within five (5) years of this new amendment, provided, however, that Final Subdivision Approval for the entire project shall be secured within ten (10) years of the effective date of this new amendment." (March 13, 2018 and March 13, 2023, respectively)

After review, the concerned agencies have not amended their requirements for final subdivision approval. Therefore, please be informed that, **in light of the deadlines set out in Ord. No. 13 029**, a second extension of time until **March 13, 2018**, for the submission of the final plat map and to obtain Final Subdivision Approval **for not less than 50 lots**, *done?*

Sidney M. Fuke  
Planning Consultant  
Page 2  
March 18, 2016

pursuant to **Condition B of Ord. No. 13 029**, notwithstanding Condition Nos. 9 and 10 of the letter of Third Revised Tentative Approval, dated April 5, 2007, of the Fifth Revised Preliminary Plat, is hereby granted.

Please be advised that Ordinance No. 92-138, adopted by the County Council on December 4, 1992, amended Chapter 23 of the Hawaii County Subdivision Control Code, reads in part, as follows:

"The subdivider shall complete all requirements specified as conditions for approval of the preliminary plat (tentative approval) within three years of said approval. An extension of not more than two (2) years may be granted by the director upon timely written request by the subdivider."

The ordinance also makes provisions for those pending subdivision applications which were granted tentative approval prior to the adoption of said ordinance, as follows:

"This subsection shall be applied to all subdivision applications which have received tentative subdivision approval and which have not completed subdivision improvements, provided the three year period, and extension, if applicable, shall be taken from December 4, 1992 and not from the date of preliminary plat (tentative) approval."

Therefore, all conditions of the Third Revised Tentative Approval dated April 5, 2007, pursuant to **Condition B of Ord. No. 13 029**, must be complied with by **March 13, 2018**.

Should the conditions of Third Revised Tentative Approval not be completed within the time limit, the approval of the Fifth Revised Preliminary Plat shall expire and shall be of no further force or effect, or shall be subject to the technical review of the applicable agencies for compliance with current code and rule requirements.

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

Sincerely,

  
DUANE KANUHA  
Planning Director

JRH:lnm  
\\COH33\planning\public\Admin Permits Division\Subdivision\2016\2016-1\SUB-89-000179WaikoloaMaukaGranted2ndTE  
03-18-16.doc

Sidney M. Fuke  
Planning Consultant  
Page 3  
March 18, 2016

xc:   Manager, DWS  
      Director, DPW  
      District Environmental Health Program Chief, DOH  
      Planning Department-Kona  
      DPW-ENG-KONA  
      Stefan Martirosian, Waikoloa Mauka, LLC  
      Russell Figueiroa, LPLS, R.M. Towill Corporation  
      PUD 42; REZ 678 (Ord. 13 029)

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



R. M. TOWILL CORPORATION  
SINCE 1930

Planning  
Engineering  
Environmental Services  
Photogrammetry  
Surveying  
Construction Management

## Letter of Transmittal

To Department of Transportation - Highways Division Date September 27, 2007  
Address 869 Punchbowl Street, Room 301 Fax Number  
Honolulu, Hawaii 96813 Project Waikoloa Highlands Sub'd

Attention Mr. Ronald Tsuzuki, Highway Planning Head

RMTC Project Number 1-21090-00

<b>Sending</b>	<input checked="" type="checkbox"/> Attached	<input type="checkbox"/> Under Separate Cover	<input type="checkbox"/> Via Facsimile
<input type="checkbox"/> Drawing Prints	<input type="checkbox"/> Drawing Originals	<input type="checkbox"/> Specifications	<input type="checkbox"/> Other
<input type="checkbox"/> Cost Estimate	<input type="checkbox"/> Change/Field Order	<input type="checkbox"/> Digital Files	<input type="checkbox"/> Originals will be mailed
<b>Number of Copies</b>	<b>Description</b>		

1	Budgetary Estimate for Queen Kaahumanu Highway and Waikoloa Road Intersection Improvements (Dated 9/27/07)
1	Budgetary Estimate for Mamalahoa Highway and Waikoloa Road Intersection Improvements (Dated 9/27/07)

<b>Action</b>	<input type="checkbox"/> Approval	<input type="checkbox"/> Review and Comment	<input checked="" type="checkbox"/> Your Use
	<input type="checkbox"/> Signature and Return To This Office	<input type="checkbox"/> As Requested	<input type="checkbox"/> Appropriate Action
<b>Remarks</b>			

Mr. Tsuzuki,

As requested, providing cost estimate for the subject intersections.

If you have any questions, please contact Bert Toba or myself at 842-1133 or by email at Bertt@rmtowill.com or Haroldt@rmtowill.com, respectively.

Copies to  
cc

By Harold Takemoto

*HT*

# EXHIBIT 4

**WAIKOLOA HIGHLANDS SUBDIVISION  
BUDGETARY ESTIMATE**

**MAMALAHOA HIGHWAY AND WAIKOLOA ROAD INTERSECTION IMPROVEMENTS  
9/27/2007**

Item No.	Description	Total Price
1	AC PAVEMENT	\$17,500.00
2	EARTHWORK	\$43,500.00
3	PAVEMENT STRIPING	\$2,900.00
4	INTERSECTION SIGNALIZATION	\$700,000.00
TOTAL		\$763,900.00

**Improvements:**

Waikoloa Road

1. Extend left pocket on the eastbound approach (17 cars).
2. Extend pavement for right turn auxiliary lane to provide space for left turn pocket.
3. Add traffic light signalization and flashing warning lights.

Mamalahoa Highway

1. Add traffic light signalization and flashing warning lights.

**WAIKOLOA HIGHLANDS SUBDIVISION  
BUDGETARY ESTIMATE**

**QUEEN KA'AHUMANU HIGHWAY AND WAIKOLOA ROAD INTERSECTION IMPROVEMENTS  
9/27/2007**

Item No.	Description	Total Price
1	AC PAVEMENT	\$397,800.00
2	EARTHWORK	\$736,600.00
3	PAVEMENT STRIPING	\$29,200.00
4	INTERSECTION SIGNALIZATION	\$300,000.00
TOTAL		\$1,463,600.00

Improvements:

Waikoloa Road

1. Add a second left turn pocket (4 cars) on westbound approach of Waikoloa Road.
2. Extend pavement for right turn auxiliary lane on westbound approach to provide space for second left turn pocket.

Queen Kaahumanu Highway

1. Extend pavement for 1,000' for new thru lane to accept new left turn movement from Waikoloa Road.
2. Replace traffic light signal mass arm, light fixtures, and standards.

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 Waiānuenue 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.



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.

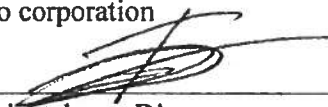
- f. Developer may direct any bidder, prospective contractor, or subcontractor to submit a statement in writing signed by an authorized officer, agent, or employee of the contracting party that the signer's practices and policies do not discriminate on the grounds of race, ancestry/national origin, religion, 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:**

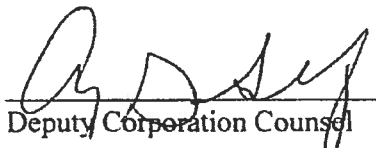
  
Susan K. Akiyama  
Housing Administrator  
Date: 11/22/16

**"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)

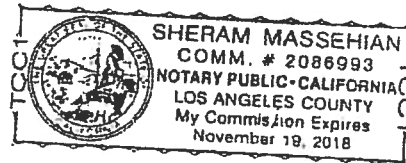
Name:

Sheram Mashehian

Notary Public, State of

California

My commission expires:



**EXHIBIT A**

**MAP OF DEVELOPMENT AREA**

ENLARGEMENT  
Scale 1 inch = 300 feet

EXHIBIT A

TMK: 2-8-002: 016

# WAIKOLOA DEVELOPMENT (FILE PLAN 1172)

Lot 7  
Baldy Top Mt.  
300 Acres

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 8521-B,  
APANA 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

At Waikoloa, South Kohala, Island of Hawaii, Hawaii  
Tax Map Key (2nd Edition) 9-2-0216

Owner: WTDL Corporation  
Address: 120 Arden Oak Lane

Not  
to be used for  
any other purpose  
except as shown on  
this map



**EXHIBITS B & C**

**MAPS OF 14.951 ACRE AREA**

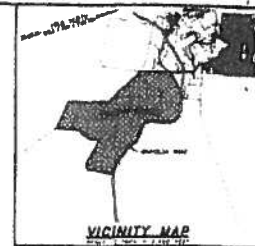
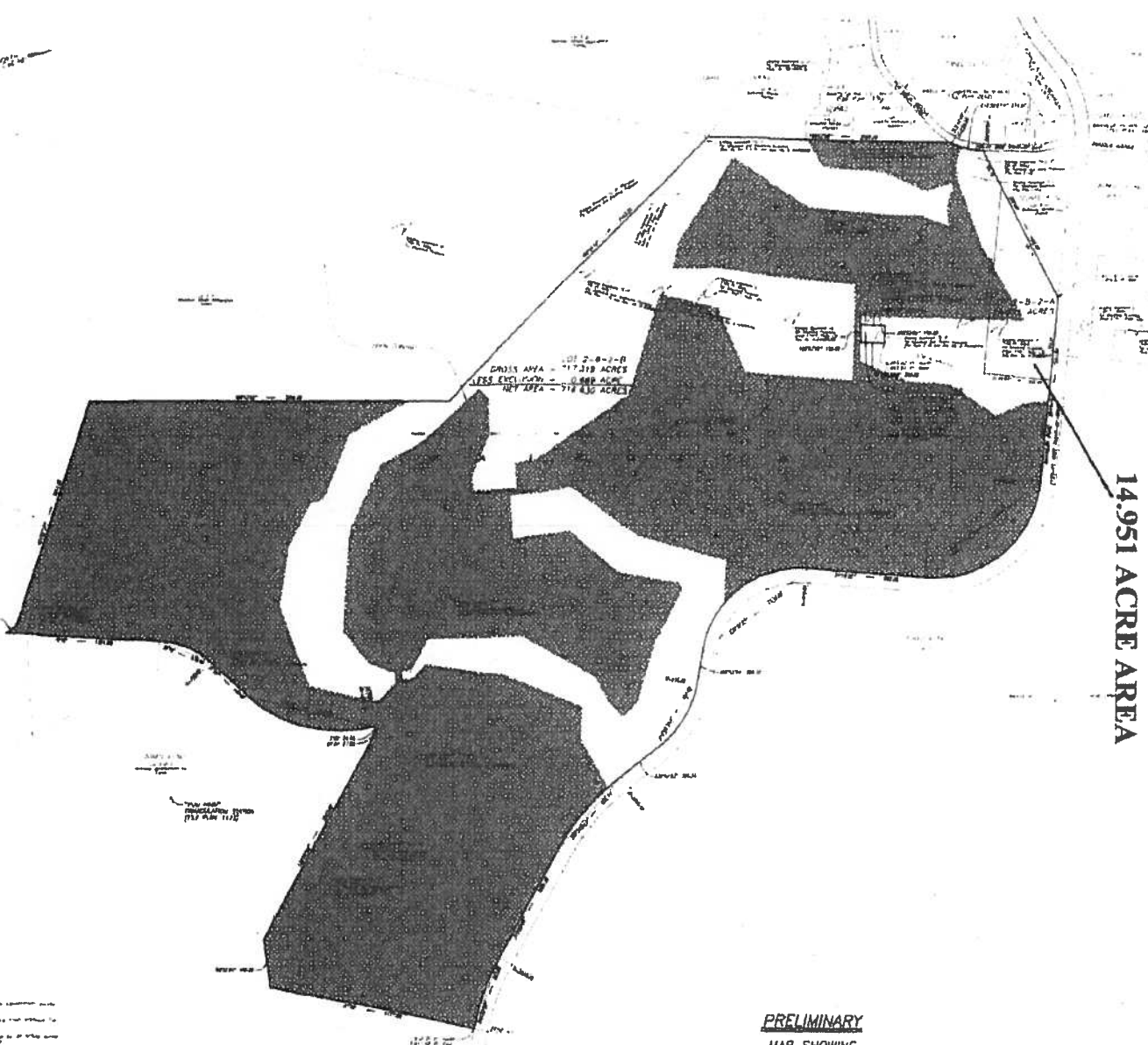


EXHIBIT B



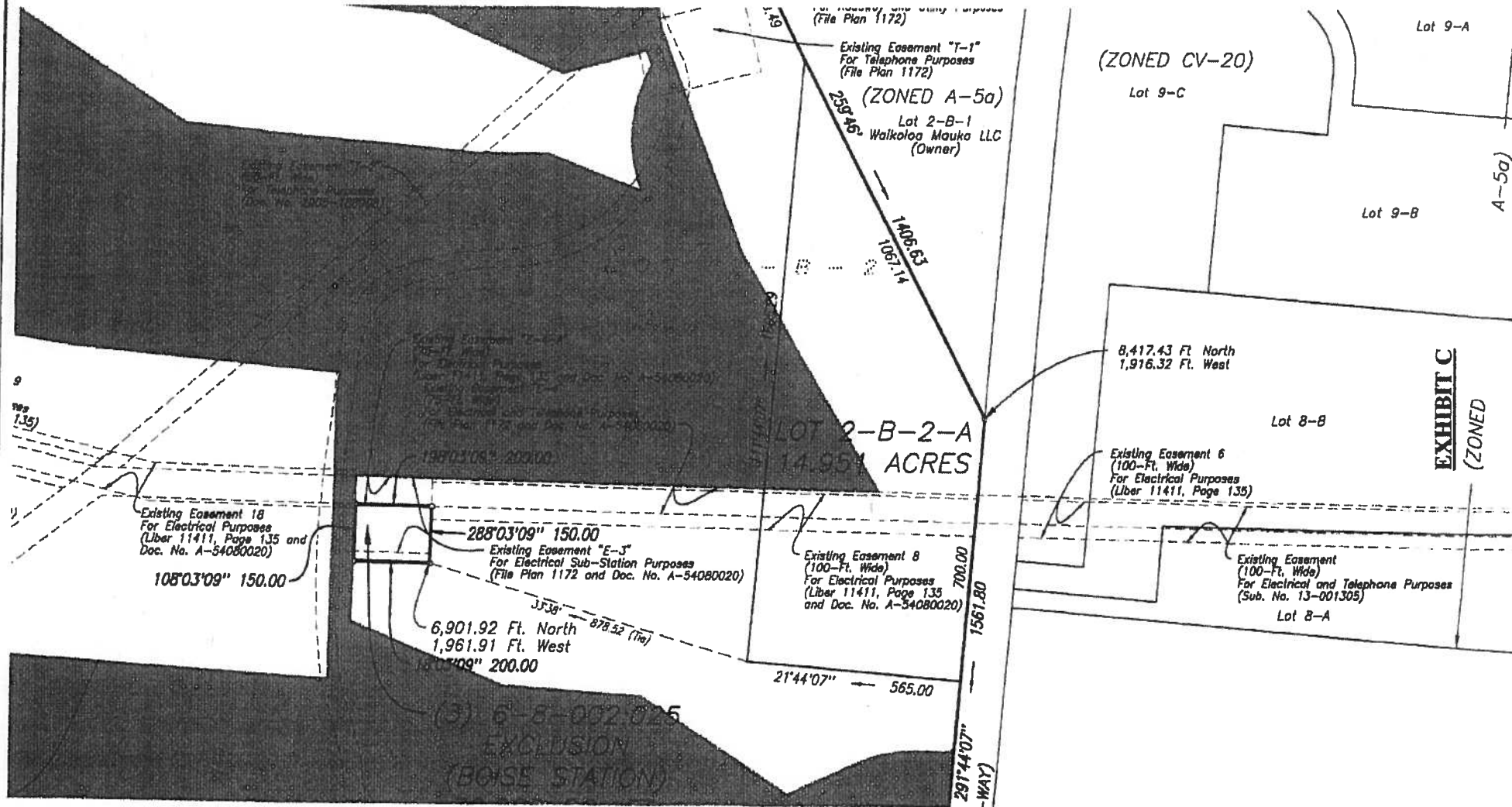
**PRELIMINARY**  
MAP SHOWING  
SUBDIVISION OF LOT 2-B-2  
Being a Portion of R.P. 5671, L.C. Aw. 8521-B, Ap. 1 to G. D. Hueu  
INTO LOT 2-B-2-A AND LOT 2-B-2-B  
At Waikoloa, South Kohala  
Island and County of Hawaii, State of Hawaii

NOTES:  
1. The area shown on this map is the same as the area shown on the map of Lot 2-B-2, R.P. 5671, L.C. Aw. 8521-B, Ap. 1 to G. D. Hueu, as recorded in the Office of the County Clerk, Maui County, Hawaii, on 10/10/77.  
2. The area shown on this map is the same as the area shown on the map of Lot 2-B-2, R.P. 5671, L.C. Aw. 8521-B, Ap. 1 to G. D. Hueu, as recorded in the Office of the County Clerk, Maui County, Hawaii, on 10/10/77.  
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8. The area shown on this map is the same as the area shown on the map of Lot 2-B-2, R.P. 5671, L.C. Aw. 8521-B, Ap. 1 to G. D. Hueu, as recorded in the Office of the County Clerk, Maui County, Hawaii, on 10/10/77.  
9. The area shown on this map is the same as the area shown on the map of Lot 2-B-2, R.P. 5671, L.C. Aw. 8521-B, Ap. 1 to G. D. Hueu, as recorded in the Office of the County Clerk, Maui County, Hawaii, on 10/10/77.  
10. The area shown on this map is the same as the area shown on the map of Lot 2-B-2, R.P. 5671, L.C. Aw. 8521-B, Ap. 1 to G. D. Hueu, as recorded in the Office of the County Clerk, Maui County, Hawaii, on 10/10/77.

MAUI COUNTY  
OFFICE OF THE COUNTY CLERK  
100 SOUTH KAHALA AVENUE  
KAPAHULU, HAWAII 96761  
TELEPHONE: 935-2111  
FAX: 935-2112

MAUI COUNTY  
OFFICE OF THE COUNTY CLERK  
100 SOUTH KAHALA AVENUE  
KAPAHULU, HAWAII 96761  
TELEPHONE: 935-2111  
FAX: 935-2112

MAUI COUNTY  
OFFICE OF THE COUNTY CLERK  
100 SOUTH KAHALA AVENUE  
KAPAHULU, HAWAII 96761  
TELEPHONE: 935-2111  
FAX: 935-2112



**EXHIBIT D**

**MAP OF AFFORDABLE HOUSING SITE**



# EXHIBIT A



STATE OF HAWAII  
BUREAU OF CONVEYANCES—  
RECORDED

January 29, 2018 10:45 AM  
Doc No(s) A-66030880



1 1/1 KED  
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 HIGHANDS, 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 pruposes 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: \_\_\_\_\_

*[Signature]*  
Natalia Batichtcheva, Director

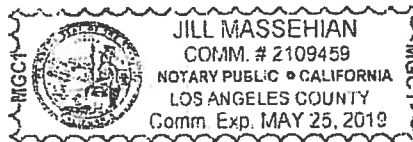
*State of California*

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]*  
\_\_\_\_\_  
Signature

Notary Public, State of CA

My commission expires: 5/25/2019



3RD. DIST.

2

8

6

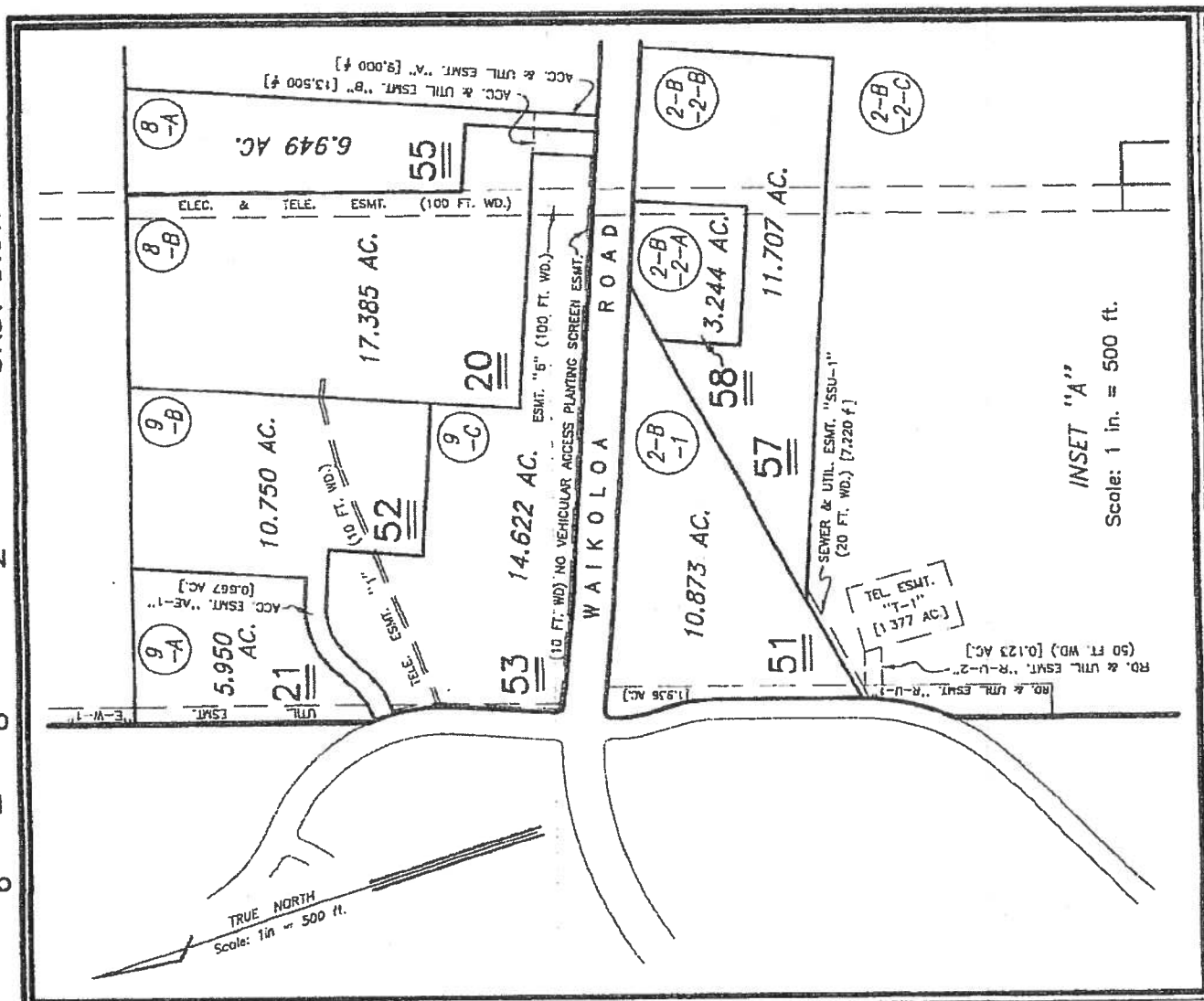


EXHIBIT A (TMK: (3) 6-8-002: 57

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;

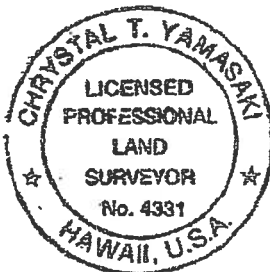
Thence, following on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

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

A handwritten signature in cursive script, appearing to read "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 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.

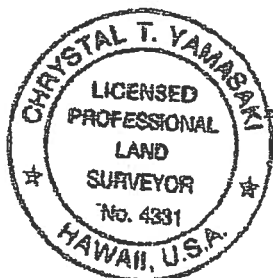
Beginning at the Northwesternly corner of this easement, being also the Northwesternly corner of Lot 2-B-2-C and a point on the Easterly side of Pua Melia Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 8,167.53 feet North and 3,300.58 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  $200^{\circ} 08' 20''$  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.  $199^{\circ} 05' 44.5''$

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



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

WES THOMAS ASSOCIATES

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

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 Northwestern 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.

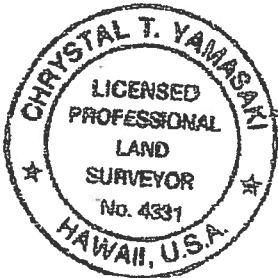
Beginning at the Northwestern corner of this easement, being also the Northwestern corner of Lot 2-B-2-C and a point on the Easterly side of Pua Melia Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HINAI" being 8,167.53 feet North and 3,300.58 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  $200^{\circ} 08' 20''$  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.  $199^{\circ} 05' 44.5''$

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



WES THOMAS ASSOCIATES

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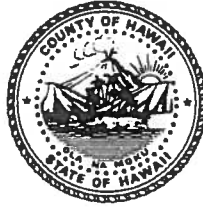
Chrystal Thomas Yamasaki  
Licensed Professional Land Surveyor  
State of Hawaii Certificate No. LS-4331

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

Harry Kim  
Mayor

Wil Okabe  
Managing Director

Barbara J. Kossow  
Deputy Managing Director



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  
Existing Housing: (808) 959-4642 • Fax (808) 959-9308  
Kona: (808) 323-4300 • Fax (808) 323-4301

July 25, 2017

**TRANSMITTAL**

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

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

**SUBJECT: RELEASE AGREEMENT FOR WAIKOLOA HIGHLANDS**  
**TMK: (3)6-8-002:016 & 057**

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

<u>ORIG</u>	<u>DATE</u>	<u>DESCRIPTION</u>
1	07/20/2017	Release Agreement TMK: (3)6-8-002:016 & 057

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

c. Accounting





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

WAIKOLOA HIGHLANDS, INC.  
121 West Lexington Drive, Suite 726  
Glendale, CA 91203

TITLE OF DOCUMENT:

**AFFORDABLE HOUSING RELEASE AGREEMENT**

PROPERTY DESCRIPTION:

Tax Map Key: (3) 6-8-002: 057 (the "Affordable Housing Site")  
Waikoloa, South Kohala, Hawai'i

(This document consists of 3 pages)

**RELEASE AGREEMENT**

This Agreement is made and effective this 20th day of July, 2017, by and between **WAIKOLOA HIGHLANDS, INC.**, a Colorado corporation, hereinafter referred to as "Developer", whose principal place of business and mailing address is 121 West Lexington Drive, Suite 726, Glendale, California 91213, and the **COUNTY OF HAWAI'I**, a municipal corporation of the State of Hawai'i, hereinafter referred to as "County", whose principal place of business and mailing address is 25 Aupuni Street, Hilo, Hawai'i 96720.

WHEREAS, the Developer proposes to develop the Waikoloa Highlands 386+/- residential lot project, hereinafter referred to as "Highlands project", on approximately of 731+/- acres of real property at TMK: (3) 6-8-002: 016; and

WHEREAS, to address and satisfy the Highland Project's affordable housing requirement as mandated in County of Hawai'i Change of Zone Ordinance No. 13-29, the Developer and the County entered into an unrecorded *Agreement*, dated December 1, 2016, which required the subdivision and conveyance to Plumeria At Waikoloa, LLC, a Hawai'i non-profit corporation, the "Affordable Housing Site" consisting of approximately 11.8+/- acres of land identified as TMK: (3) 6-8-002: 057 and as depicted in the unrecorded *Agreement*; and

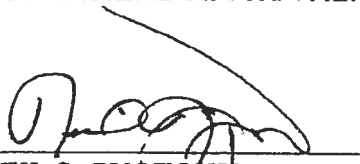
WHEREAS, the Developer has taken such actions and has executed all necessary documents as required it under said unrecorded *Agreement*; and

WHEREAS, it has been confirmed that the Developer has taken such actions and has satisfied the conditions as set forth in said unrecorded *Agreement*;

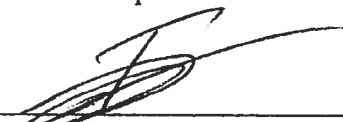
THEREFORE, any restrictive terms and conditions on the property as set forth in the *Agreement* have been and herein are released and further that the affordable housing requirement for the Highlands project is hereby deemed to have been fulfilled.

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

RECOMMEND APPROVAL:


  
NEIL S. GYOTOKU  
Housing Administrator, OHCD  
Date: JUL 05 2017

WAIKOLOA HIGHLANDS, INC.  
a Colorado Corporation

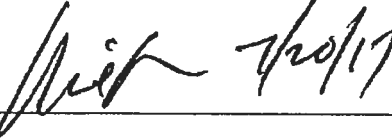
By:   
Natalia Batichtcheva, Director  
Date: 06/01/17

DEVELOPER

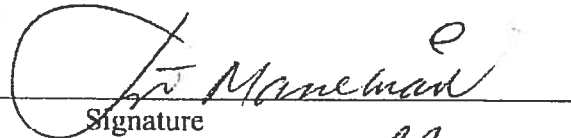
APPROVED AS TO FORM  
AND LEGALITY:

By:   
Office of Corporation Counsel  
Its: Deputy Corporation Counsel

COUNTY OF HAWAII

By:   
Managing Director  
Its: WILFRED M. OKABE  
COUNTY

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



STATE OF HAWAII )  
 )  
COUNTY OF HAWAII ) SS.

On this 20<sup>th</sup> day of July, 2017, before me personally appeared WILFRED M. OKABE, to me personally known, who, being by me duly sworn, did say that he is the Managing Director of the County of Hawai'i, a municipal corporation of the State of Hawai'i, that the foregoing instrument was signed on behalf of the County of Hawai'i by authority given to said Mayor of the County of Hawai'i by Sections 5-1.3 and 13-13 of the County Charter, County of Hawai'i (2016), as amended, and assigned by the Mayor to the Managing Director pursuant to Section 6-1.3(h) of the County Charter; and said WILFRED M. OKABE acknowledged said instrument to be the free act and deed of said County of Hawai'i.

Martha A. Rodillas  
Signature

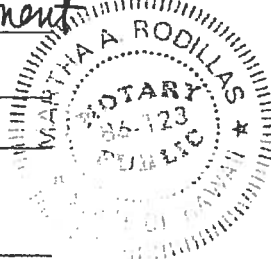
MARTHA A. RODILLAS  
Print or Type Name

Notary Public, State of Hawai'i

My Commission Expires: 03-26-18



NOTARY CERTIFICATION		
Doc. Date: <u>7/20/17</u>	No. of Pages: <u>4</u>	
<u>undated at time of notary</u>		
Notary Name: <u>MARTHA A. RODILLAS</u>	Third Circuit	
Doc. Description: <u>Affordable Housing Release Agreement</u>		
<u>Martha A. Rodillas</u> <u>7/20/17</u>		
Notary Signature	Date	



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



R. M. TOWILL CORPORATION  
SINCE 1930

Planning  
Engineering  
Environmental Services  
Photogrammetry  
Surveying  
Construction Management

## Letter of Transmittal

To County of Hawaii, Department of Public Works

Date June 22, 2007

Address Aupuni Center  
101 Pauahi Street, Suite 7  
Hilo, Hawaii 96720-4224

Fax Number

Project Waikoloa Highlands Sub'd, Increment 1 and 2,  
Subdivision No. 89-179  
TMK: 6-8-002:016 (3rd Division)

Attention Mr. Bruce McClure, Director

RMTC Project Number 1-20580-0

### Sending

☒ Attached

☐ Under Separate Cover

☐ Via Facsimile

☐ Drawing Prints

☐ Drawing Originals

☐ Specifications

☒ Other

Pages sent including coversheet

☐ Cost Estimate

☐ Change/Field Order

☐ Digital Files

Other Design Report

☐ Originals will be mailed

### Number of Copies

### Description

2

Preliminary Drainage Report for Waikoloa Highlands Subdivision, Increment 1 and 2 (Dated June 22, 2007)

### Action

☐ Approval

☒ Review and Comment

☐ Your Use

☐ Signature and Return To This Office

☐ As Requested

☐ Appropriate Action

### Remarks

Mr. McClure,

Submitting Preliminary Drainage Report to support the preliminary construction plans submitted for review and comment back in April 20, 2007.

If you have any questions, please contact me at 842-1133 or by email at [haroldt@rmtowill.com](mailto:haroldt@rmtowill.com).

Copies to

By Harold Takemoto

cc Charles Santos/Sidney Fuke (Transmittal Only)

# EXHIBIT 8