



DEPARTMENT OF THE CORPORATION COUNSEL 205

VICTORIA J. TAKAYESU 5481
Corporation Counsel

ANDREW V. NELSON 9783
Deputy Corporation Counsel

County of Maui
200 S. High Street
Wailuku, Hawaii 96793
Telephone: (808) 270-7740
Facsimile: (808) 270-7152
Email: andrew.v.nelson@co.maui.hi.us

Attorneys for
DEPARTMENT OF ENVIRONMENTAL MANAGEMENT,
COUNTY OF MAUI

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

In the Matter of the Petition of)	DOCKET NO. SP97-390
)	
COUNTY OF MAUI DEPARTMENT OF ENVIRONMENTAL MANAGEMENT)	PETITION FOR DECLARATORY ORDER TO REMOVE IMPORTANT AGRICULTURAL LANDS DESIGNATION; EXHIBITS "A" – "C"
)	
For Declaratory Order to Remove Important Agricultural Lands Designation for approximately 22 acres at Puunene, Maui, Hawai'i, TMK No. (2) 3-8-003-019 (por.))	
)	
)	
)	

**PETITION FOR DECLARATORY ORDER
TO REMOVE IMPORTANT AGRICULTURAL LANDS DESIGNATION**

Comes now, Petitioner the COUNTY OF MAUI ("Petitioner"), by and through its attorney, VICTORIA J. TAKAYESU, and respectfully petitions the Land Use Commission of the State of Hawai'i ("Commission") to issue a declaratory order removing approximately 22 acres of land at Puunene, Maui, Hawai'i ("Property"), more particularly described below, from the Important Agricultural Lands ("IAL") designation pursuant to §§ 15-15-98, 99, and 127 of the Hawaii Administrative Rules ("HAR"). In support of this Petition, Petitioner alleges and avers as follows:

I. Petition Content Requirements.

Contents requirement for Petition for Declaration Order pursuant to HAR § 15-15-99:

A. Name, address and telephone number of Petitioner. Petitioner the COUNTY OF MAUI is a political subdivision of the State of Hawaii, whose business address is 200 South High Street, Wailuku, Maui, Hawaii 96793, and telephone number is (808) 270-7740. Victoria J. Takayesu, Andrew V. Nelson, and the Department of the Corporation Counsel have been appointed to represent the Petitioner pursuant to HAR Section 15-15-35(b). All correspondence and communications in regard to this Petition shall be addressed to, and served upon, Victoria J. Takayesu, Department of the Corporation Counsel, 200 S. High Street, 3rd Floor, Wailuku, Hawaii 96793.

B. Statement of Petitioner's interest in the subject matter, reason for the submission, and relationship to Commission docket regarding special permit. Petitioner is the owner in fee simple of those lands located on the island of Maui, Hawai'i, and more specifically identified and described on Exhibit "B" attached hereto ("Property"). The portion of the Property that is designated as IAL is displayed in Exhibit "C" attached hereto. Petitioner requests the Commission remove the IAL designation on the Property pursuant to HAR §§ 15-15-98, 99, and 127. This

petition is submitted to comply with Condition No. 21 of the Commission's order approving the Fourth Amendment to the Land Use Commission Special Permit filed August 13, 2020, as modified by order filed October 27, 2020, Docket No. SP97-390 ("SP").

C. Designation of specific question. Whether the IAL designation on a portion of the Property should be removed pursuant to HAR §§ 15-15-98, 99, and 127.

D. Statement of Petitioner's position or contention. It is Petitioner's position that the Property meets the qualifications for removal of the IAL designation under HAR § 15-15-127(f), and that the Commission should issue a declaratory order removing the IAL designation from the Property pursuant to HAR § 15-15-127(f).

E. Signature of each petitioner. This petition is signed below by Petitioner's attorney who is authorized to sign and file this petition on Petitioner's behalf.

F. Memorandum of authorities, containing a full discussion of reasons and legal authorities in support of Petitioner's position. The petition for declaratory order content requirements under subchapter 14 are found at HAR § 15-15-99 and are discussed in Sections A-F herein. HAR § 15-15-127(f) sets out requirements for the removal of an IAL designation and provides:

The commission may, upon petition by the farmer or landowner of lands designated as important agricultural lands, remove all or a portion of those important agricultural lands from the "important agricultural lands" designation if, after a hearing held pursuant to subchapter 14, the commission finds upon a preponderance of the evidence that a sufficient supply of water is no longer available to allow profitable farming of the land due to governmental actions, acts of God, or other causes beyond the farmer's or landowner's reasonable control.

Subsection 1. provides background and a description of procedural matters. Subsection 2. provides rationale for the removal of the IAL designation from the Property.

1. Background and Procedural Matters. The Central Maui Landfill Facilities Project Area ("CML") is located at 8100 Pulehu Road in Puunene, in the central valley, and is the primary landfill facility for Maui Island. As noted in the County's request for a Fourth Amendment to the SP, uses within the CML include landfilling and also organics management, recycling, and waste diversion activities as permitted. The Department of Environmental Management plans to restart a composting program at the CML in the future. The only other municipal landfill is located in Hana. The County has acquired land over time from Alexander & Baldwin, Inc., and the CML primarily consists of lands quarried by HC&D and adjacent lands previously utilized for sugar cane cultivation.

Surrounding uses to the CML include fallow/previously cultivated lands and active agricultural activities to the north, south, and west, and the HC&D Quarry operation to the east. In the vicinity of the CML and located across Pulehu Road at 8001 Pulehu Road, and designated as Tax Map Key Nos. (2)3-8-003:023 and 24, is approximately 65.7 acres of land owned by Maui Electric Co., Ltd., a subsidiary of Hawaiian Electric Industries, Inc., reclassified by the LUC from Agricultural to Urban to permit the construction of the utility's since shelved Waena Generating Station project. See Order in LUC Docket No. A97-722, filed June 22, 2012. In February 2024, Hawaiian Electric announced a biofuel-powered generator project to be developed by a renewable energy project developer on its Waena land.

On April 6, 2009, Alexander & Baldwin, Inc. filed a Petition for Declaratory Order to Designate Important Agricultural Lands ("IAL") involving approximately 27,102 acres of land, inclusive of the subject 22-acre Petition Area, located at Wailuku and Makawao, Maui, Hawaii. See LUC Docket No. DR09-38. Alexander & Baldwin claimed no credits for the IAL designation pursuant to Section 205-45(h), Hawaii Revised Statutes ("HRS"). See Paragraph 1 of the LUC's

Decision and Order entered June 29, 2009, in Docket No. DR09-38, designating the 27,102 acres of land as IAL.

As part of the LUC's consideration of the County's request for a Fourth Amendment to the SP, the LUC referred the application to the State of Hawaii Department of Agriculture ("DOA"), which agreed with the County that the proposed use of the Petition Area and other lands that were the subject of the request for a Fourth Amendment is unusual and reasonable because it will support and expand the CML, which is a unique and essential facility for the County. See, Footnote No. 2, to the SP. The DOA also recommended that the County consider mitigation measures, including removal of the IAL designation within the CML pursuant to the process outlined in HRS § 205(g) and/or implementing a remediation plan for IAL designated lands to be returned to agricultural use after the life of the CML. *Id.*

SP Condition No. 21 requires:

That the Applicant shall submit a petition for Declaratory Ruling to the LUC to withdraw the 22 acres of IAL from the IAL designation within one year of the LUC's Decision and Order for the Applicant's Fourth Amendment Request.

See Order Granting Land Use Commission Staff's Request to Issue an Errata to the Findings of Fact, Conclusions of Law, and Decision and Order Approving with Modifications the Recommendation of the County of Maui Planning Commission to Approve a Fourth Amendment to the Land Use Commission Special Permit, filed October 27, 2020. As noted above, this Petition is submitted to comply with SP Condition No. 21.

2. Removal of the IAL Designation from the Property. Consistent with the State Office of Planning's recommendation and the County's representation to the LUC, the County hereby requests the Commission's approval to withdraw the 22 acres of land previously designated IAL pursuant to HRS §205-50(g) and HAR §15-15-127, which allows a landowner to petition the

LUC to remove the IAL designation from lands if a sufficient supply of water is no longer available to allow profitable farming due to governmental actions, acts of God, or other causes beyond the landowner's reasonable control. The 22-acre Petition Area is less than 1/10th of 1 percent of the 27,102 acres of land designated IAL by LUC Docket No. DR09-38, specifically .081 percent. The former sugar cane fields included in A&B's 27,102-acre IAL designation were served by private water systems and sources, including the previous landowner's drip irrigation system, brackish water wells, reservoirs, and ditch systems. See Findings of Fact Nos. 25-26, Docket No. DR09-38; also see Exhibit "A" attached hereto, Declaration of Shayne Agawa, P.E., Director of the Department of Environmental Management.

None of these water sources or systems are owned by the County of Maui or authorized for the use of the County within the Petition Area or the boundaries of the CML. Exhibit "A". Rainfall in the area averages 15.8 to 59.1 inches of rain annually. See Findings of Fact No. 27, Docket No. DR09-38. However, as noted in the LUC's Finding of Fact No. 44 in Docket No. A97-722 related to land in the immediate vicinity of the Petition Area, the location is dry, with median rainfall of 17-20 inches annually. The dry and windy conditions allow only a small percentage of rainfall to percolate deep enough below the ground surface to become groundwater recharge. Based upon the lack of water available to the County for agricultural purposes, the Petition Area meets the criteria for removal from IAL identified in HRS §205-50(g) and HAR §15-15-127(f).

Based on the foregoing, Petitioner respectfully requests that the Commission find that the Petition meets the standards for removal of the IAL designation from the Petition Area pursuant to HRS §205-50(g) and HAR §15-15-127(f), removes the IAL designation from the Petition Area, and acknowledges the satisfaction of Condition No. 21 of the Commission's order approving the Fourth Amendment to the Land Use Commission Special Permit filed August 13, 2020, as modified by order filed October 27, 2020, Docket No. SP97-390.

DATED: Wailuku, Maui, Hawai'i, June 04, 2024.

VICTORIA J. TAKAYESU
Corporation Counsel
Attorneys for DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
COUNTY OF MAUI

By Andrew Nelson
ANDREW V. NELSON
Deputy Corporation Counsel

LAND USE COMMISSION

STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. SP97-390
)	
COUNTY OF MAUI DEPARTMENT OF)	CERTIFICATE OF SERVICE
ENVIRONMENTAL MANAGEMENT)	
)	
For Declaratory Order to Remove)	
Important Agricultural Lands Designation)	
for approximately 22 acres at)	
Puunene, Maui, Hawai'i,)	
TMK No. (2) 3-8-003-019 (por.))	
_____)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document was duly served on this date on the below-named parties electronically and by U.S. Mail, postage prepaid:

ALISON S. KATO
Deputy Attorney General
State of Hawaii
425 Queen St.
Honolulu, Hawaii 96813
Alison.S.Kato@hawaii.gov
Attorney for the Office of Planning and
Sustainable Development, State of Hawaii

KATE BLYSTONE
Planning Director
County of Maui
Kate.Blystone@co.maui.hi.us

MIMI DESJARDINS
First Deputy Corporation Counsel
County of Maui
Mimi.DesJardins@co.maui.hi.us
Attorney for Planning Director

DATED: Wailuku, Maui, Hawai‘i, June 04, 2024_____.

VICTORIA J. TAKAYESU
Corporation Counsel
Attorneys for DEPARTMENT OF
ENVIRONMENTAL MANAGEMENT,
COUNTY OF MAUI

By *Andrew Nelson*_____
ANDREW V. NELSON
Deputy Corporation Counsel

LAND USE COMMISSION

STATE OF HAWAI'I

In the Matter of the Petition of)	DOCKET NO. SP97-390
)	
COUNTY OF MAUI DEPARTMENT OF)	DECLARATION OF
ENVIRONMENTAL MANAGEMENT)	SHAYNE AGAWA
)	
For Declaratory Order to Remove)	
Important Agricultural Lands Designation)	
for approximately 22 acres at)	
Puunene, Maui, Hawai'i,)	
TMK No. (2) 3-8-003-019 (por.))	
_____)	

DECLARATION OF SHAYNE AGAWA

I, SHAYNE AGAWA, do hereby declare as follows:

1. I am the Director of the Department of Environmental Management of the County of Maui, State of Hawai'i.

2. I make this declaration upon personal knowledge and am competent to testify to the matters stated herein.

3. The Central Maui Landfill ("CML") is located at 8100 Pulehu Road in Puunene, in the central valley, and is the primary landfill facility for Maui Island. As noted in the County's request for a Fourth Amendment to SP97-390, uses within the CML include landfilling and also organics management, recycling, and waste diversion activities. The only other municipal landfill on Maui is located in Hana. The County has acquired land over time from Alexander & Baldwin, Inc. ("A&B"), and the CML area primarily consists of lands quarried by Ameron HC&D and adjacent lands previously utilized for sugar cane cultivation.

4. The 22-acre portion of the Central Maui Landfill permitted area ("Petition Area") that is the subject of the Petition for Declaratory Order is a tiny fraction of the acreage originally

included in A&B's petition to designate 27,102 acres as Important Agricultural Lands ("IAL"). During A&B's ownership, these lands, including the Petition Area, were served by private water systems and sources, including drip irrigation system, brackish water wells, reservoirs, and ditch systems.

5. None of these water sources or systems are owned by the County of Maui or authorized for the use of the County within the Petition Area or the boundaries of the CML.

6. Rainfall in the area is rare, and the region is generally dry and windy. These conditions allow only a small percentage of rainfall to percolate deep enough below the ground surface to become groundwater recharge.

7. There is no water available to the County for agricultural purposes, which are not the current intended use of the lands at issue.

8. Removal of the IAL designation will allow the County to comply with the Land Use Commission's Condition No. 21 of the Fourth Amendment to the Special Permit 97-390.

I declare under penalty of perjury under the laws of the State of Hawai'i that the foregoing is true and correct.

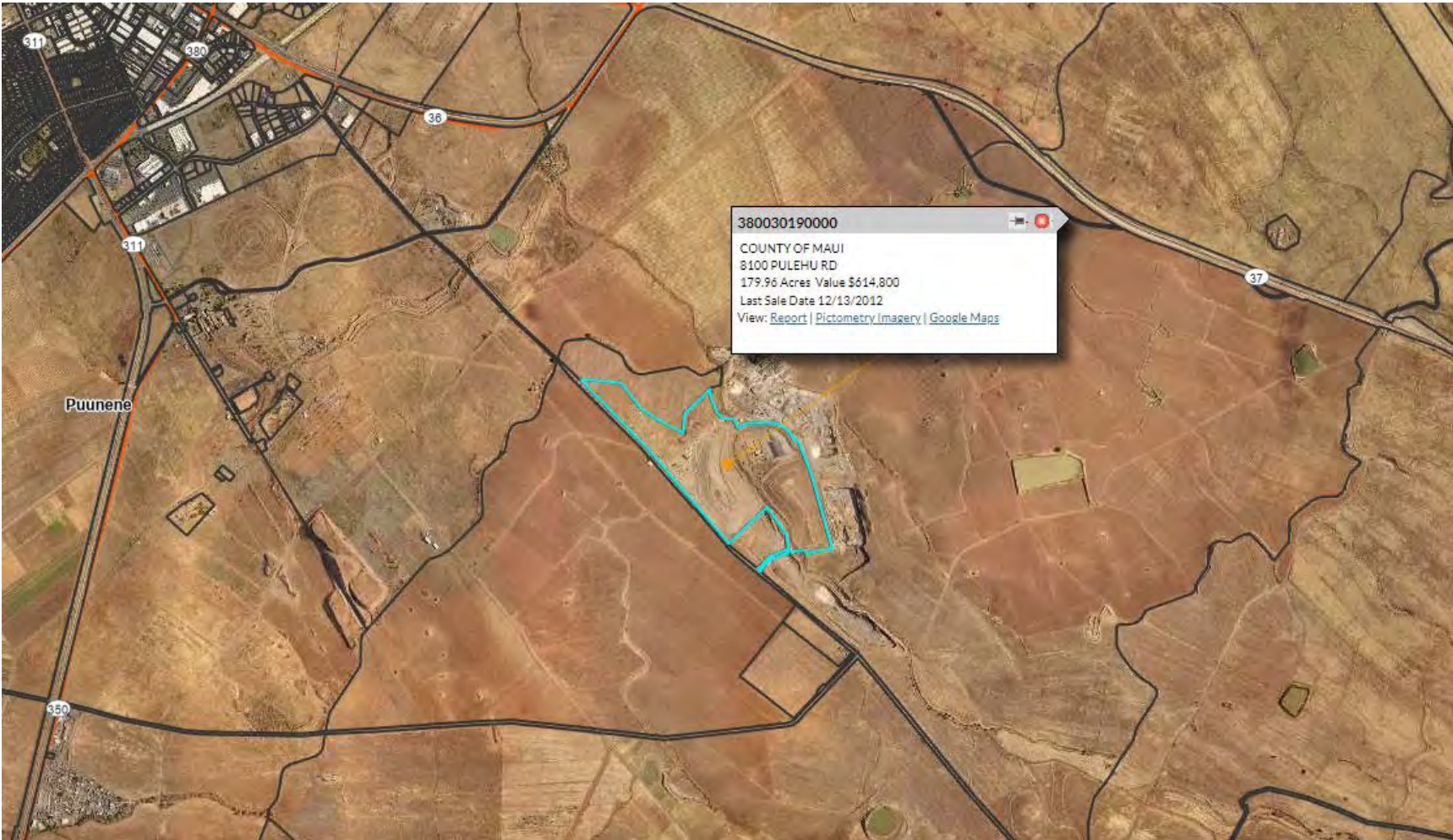
DATED: Wailuku, Maui, Hawai'i, May, 22, 2024.



DN: cn=Shayne R. Agawa, ou=Director of the
Dept. of Environmental Management,
email=shayne.agawa@co.maui.hi.us, c=US
Date: 2024.05.22 11:45:47 -10'00'

SHAYNE AGAWA

Exhibit "B" – Property Records
Maui County Department of Finance, Real Property Assessment Division



Parcel Information

Parcel Number 380030190000
 Location Address 8100 PULEHU RD
 KAHULUI HI 96732
 Neighborhood Code 3878-4
 Legal Information
 Land Area 179.962 Acres
 Parcel Note Non taxable

[View Map](#)

Damage
 Reentry Zone
 Zone Color

Owner Information

Owner Names
 COUNTY OF MAUI Fee Owner

Mailing Address
[COUNTY OF MAUI](#)

Assessment Information

[Show Historical Assessments](#)

Year	Tax Class	Market Land Value	Agricultural Land Value	Assessed Land	Building Value	Total Assessed Value	Total Exemption Value	Total Net Taxable Value
2024	INDUSTRIAL	\$611,900	\$0	\$611,900	\$2,900	\$614,800	\$614,800	\$0

[How to calculate real property taxes](#)

Accessory Information

Building Number	Description	Dimensions/Units	Year Built	Percent Complete	Value
1	METAL UTILITY SHED	0x0 204 / 1	1991	100%	\$2,943

Sales Information

Sale Date	Price	Instrument Number	Instrument Type	Valid Sale or Other Reason	Document Type	Record Date	Land Court #	Land Court Cert
12/13/2012	\$0	A47440055	Fee conveyance		Warranty deed	12/27/2012		
11/12/2008	\$1,880,000	08-175219	Fee conveyance		Limited warranty/apartment deed	11/18/2008		
1/7/1988	\$0	0000000000						
3/12/1987	\$0	0000137249				9/8/1987		

Maui's Automated Planning & Permitting System

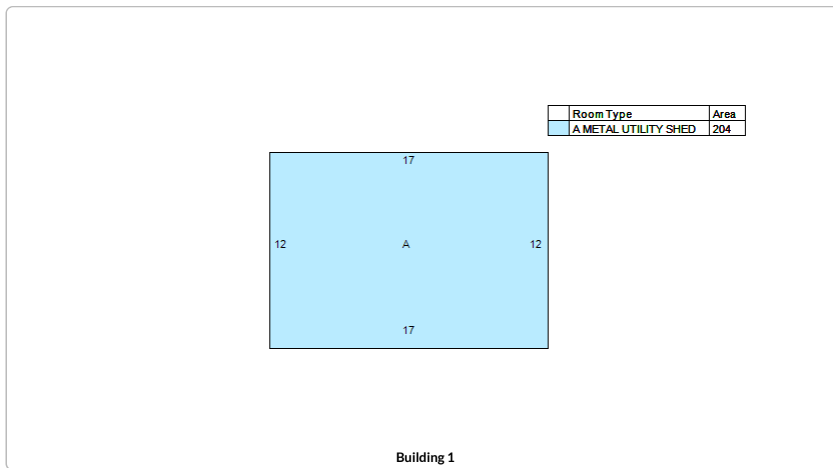
[Click Here to View All Planning and Permitting Info Regarding This TMK](#)

Permit Information

[Maui's Automated Planning & Permitting System link](#)

Date	Permit Number	Reason	Permit Amount
9/19/2022	B2022-00060		\$500,000
8/4/2021	B20210899	Other see notes	\$500,000
3/5/2021	B20210256	Other see notes	\$131,435
9/11/2014	B20141188	Other see notes	\$302,000
10/18/2011	B20111114	Modular building	\$242,391
2/5/1991	91 0237	Storage bldg	\$2,000

Sketches



Recent Sales In Area

Sale date range:

From: To:

Generate Owner List by Radius

Distance:

Use Address From:

Owner Property

Select export file format:

International mailing labels that exceed 5 lines are not supported on the Address labels (5160). For international addresses, please use the xlsx, csv or tab download formats.

- Show All Owners
- Show Parcel ID on Label

Skip Labels

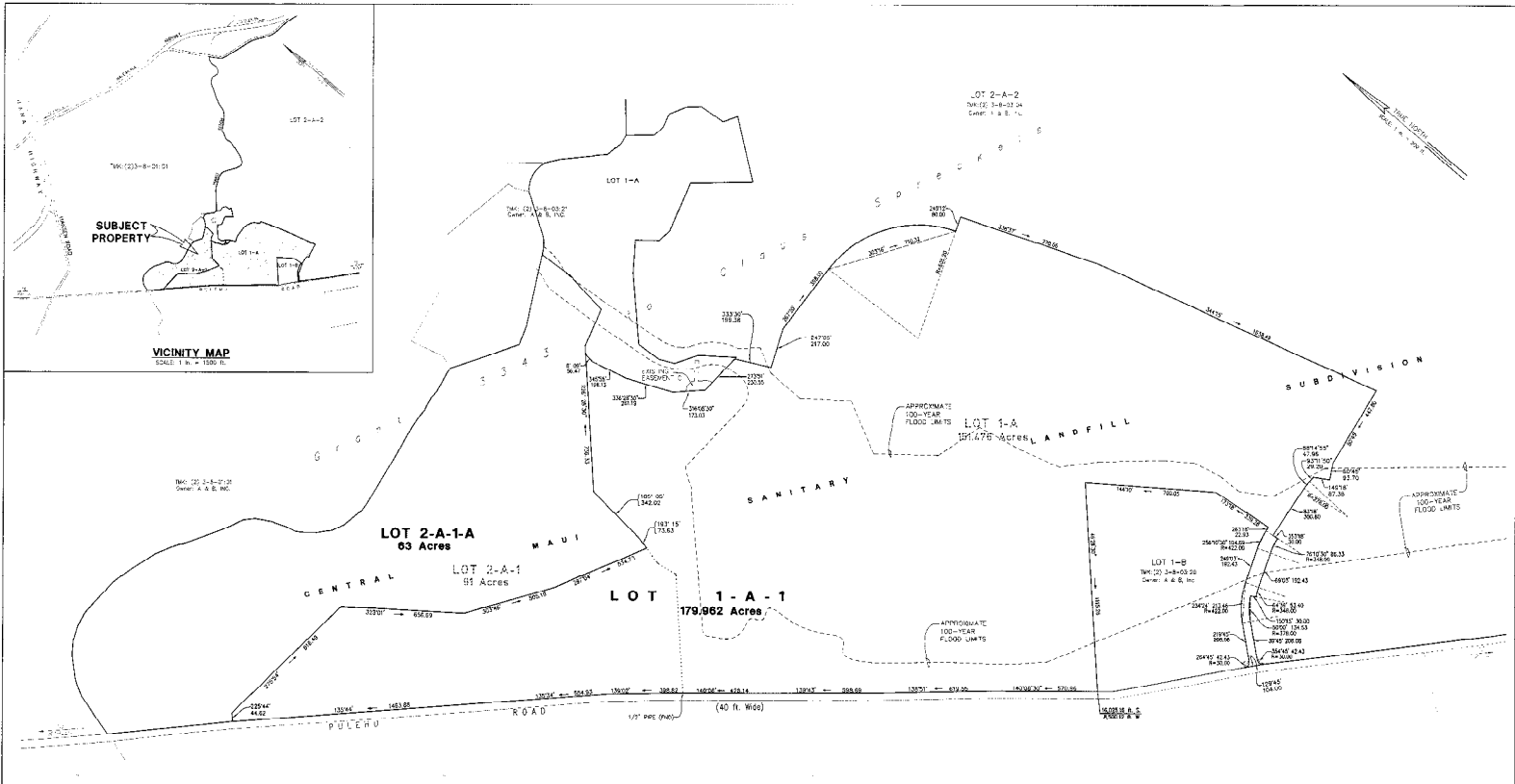
No data available for the following modules: Assessment Notices, Tax Bills, Agricultural Assessment Information, Current Tax Bill Information, Historical Tax Information, Appeal Information, Home Exemption Information, Improvement Information, Additions, Commercial Improvement Information.

[User Privacy Policy](#) [GDPR Privacy Notice](#)
 Last Data Upload: 5/21/2024, 2:54:49 AM



Exhibit "C"

Note: this map shows the creation of Lot 1-A-1, designated as TMK (2) 3-8-003-019



- NOTES:**
1. BOUNDARY MONUMENTS SHOWN EXCEPT FROM THIS MAP.
 2. ALL WATER RIGHTS FROM COUNTY SYSTEM.
 3. MEASUREMENTS GIVEN TO BE IN ACCORDANCE WITH THE REQUIREMENTS OF THE STATE DEPARTMENT OF HEALTH.
 4. ALL SURVEYING RECORDS COPIED TO BE SHOWN.
 5. REFER TO CORRESPONDING SURVEY TRANSACTIONS.
 6. SURVEYING TO MAUI COUNTY FROM HEREON SHALL BE THE COUNTY OF MAUI IS NOT RESPONSIBLE FOR ANY DAMAGE TO PROPERTY CAUSED BY THE COUNTY OF MAUI OR ANY OTHER AGENCY OR PERSON.
 7. LOT 1-A-1 TO BE OWNED BY THE COUNTY OF MAUI.

CENTRAL MAUI SANITARY LANDFILL SUBDIVISION
CONSOLIDATION OF LOTS 1-A AND 2-A-1 AND
RESUBDIVISION OF SAID CONSOLIDATION INTO
LOTS 1-A-1 AND 2-A-1-A
 Being a Portion of Grant 3343 to Claus Spreckels
 AT PUUNENE, WAILUKU, MAUI, HAWAII

LOT 2-A-1
 Owner: ALEXANDER & BALDWIN, INC.
 Address: P. O. Box 158
 Honolulu, Hawaii 96732

LOT 1-A-1
 Owner: COUNTY OF MAUI
 Address: 200 S. High Street
 Wailuku, Hawaii 96732

THIS MAP WAS PREPARED BY ME OR UNDER MY SUPERVISION BY:

R. T. Tanaka
 R. T. TANAKA
 Licensed Professional Engineer
 License Number: 1001
 License Expiration: 09/30/2012

DATE



Revised: JUNE 28, 2011
 Revised: JUNE 3, 2011
 MAY 5, 2010

R. T. TANAKA ENGINEERS, INC.
 LAND SURVEYORS CIVIL & STRUCTURAL ENGINEERS

SUBDIVISION FILE NO. 3-223
 JOB NO. 10-10

