

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

May 11, 2018

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 16MD-011

Maui

Set Aside to County of Maui for Public Park and Ancillary Purposes, Waikapu,  
Wailuku, Maui, Tax Map Key: (2) 3-8-007:104.

APPLICANT:

County of Maui ("County")

LEGAL REFERENCE:

Section 171-11, Hawaii Revised Statutes (HRS), as amended.

LOCATION:

Portion of Government lands situated at Waikapu, Wailuku, Maui, identified by Tax Map  
Key: (2) 3-8-007:104, as shown on the attached map labeled Exhibit A.

AREA:

64.808 acres, more or less.

ZONING:

State Land Use District:	Urban
County of Maui CZO:	Agricultural

TRUST LAND STATUS:

Acquired after statehood.

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

CURRENT USE STATUS:

Actively being developed for the intended use: Public park and ancillary purposes.

PURPOSE:

Public Park and ancillary purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The Final Environmental Assessment for the Central Maui Regional Park was published in the OEQC's Environmental Notice on June 23, 2013, with a Finding of No Significant Impact (FONSI).

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

BACKGROUND:

At its meeting of December 9, 2011, under agenda item E-3, the Land Board approved in concept the acquisition of private lands at Waikapu, Wailuku, Maui for the purposes of creating the Central Maui Regional Sports Complex ("CMRSC"). At the March 28, 2014 Land Board meeting, under agenda item E-3, State Parks reported the results of their due diligence and the Land Board approved the acquisition of private lands for park purposes. At its meeting of June 13, 2014, under agenda item E-1, State Parks recommended and the Land Board authorized the acquisition of the subject property subject to the terms and conditions of a Warranty Deed with Reservations of Easements, Covenants, Reservations and Restrictions. Pursuant to the Land Board's approval, the 65.378 acres of land situate at Waikapu, Wailuku, Maui, further identified by TMK as (2) 3-8-007:104 (hereinafter the "Subject Property") was acquired on June 26, 2014.

On August 22, 2014, under agenda item D-19, the Land Board approved the issuance of a construction and management right-of-entry permit to the Division of State Parks for the subject 65.378 acre parcel. At its meeting on March 11, 2016 under agenda item E-2, the Board approved the Chairperson to negotiate and execute a Memorandum of Agreement ("MOA") between the Board and the County for the operations, management and maintenance of the CMRSC, as well as a right of entry to the County to operate, manage and maintain the completed phases of the CMRSC. The MOA was executed on July 1, 2016. A copy of the executed MOA is attached as Exhibit B.

REMARKS:

Since the execution of the MOA, the County has assumed management responsibility of the completed phases of the project. Construction of the CMRSC is nearing completion, and State Parks is working with the County to resolve the few outstanding items. Therefore, staff is now requesting that the Board authorize the set aside of the subject property to the County for Public Park and Ancillary purposes. All pertinent state, county, and federal agencies are in agreement that the County of Maui's Department of Parks and Recreation is best suited to manage and care for the CRMSC as they have the appropriate staffing and experience necessary to successfully operate this type of facility and properly address the needs of Maui's growing community.

The MOA provided for the County to use the irrigation water source, well and reservoir only for the needs of the CMRSC, and allows the State to also utilize the water without limitation, provided that the needs of the CMRSC are met. The irrigation well, reservoir, additional improvements and appurtenant areas comprising the State's water source will be excluded from the set aside and retained by the State. The withheld area is approximately 24,776 square feet or 0.57 acres. The State will enter into a separate disposition with the County to operate, repair and maintain the water source area while allowing the State to use the water for its own needs as well. The disposition will be brought before the Board for approval at a later date. Finally, the executive order will be subject to compliance with the terms and conditions of the Declarations of Restrictions (Restrictions), recorded as Document No. A-62471248, attached as Exhibit C, between the Board and the United States of America, acting through the Regional Director of the National Park Service. The Restrictions were placed on this property in exchange for the removal of restrictions that previously encumbered the Aloha Stadium property.

RECOMMENDATION:

That the Board:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to the County of Maui under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

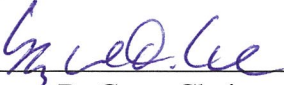
Respectfully Submitted,



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Malama Minn,  
Project Development Specialist

APPROVED FOR SUBMITTAL:



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Suzanne D. Case, Chairperson

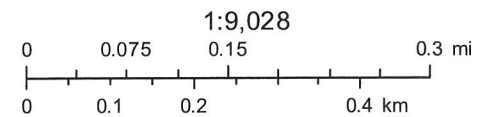


# Public Land Trust Information System



March 19, 2018

EXHIBIT "A"



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EXHIBIT "A"



**MEMORANDUM OF AGREEMENT**  
**BETWEEN THE**  
**BOARD OF LAND AND NATURAL RESOURCES**  
**AND THE**  
**COUNTY OF MAUI**  
**AND ITS**  
**DEPARTMENT OF PARKS AND RECREATION**

For Waikapu, Wailuku, Maui, Tax Map Key: (2) 3-8-007:104

**I. INTRODUCTION**

This Memorandum of Agreement ("Agreement") is made and entered into this 1<sup>st</sup> day of July 2016, by and between the State of Hawaii, Board of Land and Natural Resources (hereinafter "BLNR" or "State"), and the County of Maui, and its Department of Parks and Recreation (hereinafter referred to as the "County"), by and through the Mayor of the COUNTY OF MAUI, (hereinafter "the Mayor"), and the State and the County and identified authorities (hereinafter collectively referred to as the "Parties"). This Agreement supersedes and replaces the Right of Entry agreement pertaining to Phase 1 of the Complex, executed March 8, 2016.

The Central Maui Regional Sports Complex ("Complex") is situated on 65.378 acres of vacant, undeveloped lands in Waikapu, Wailuku, Maui, Hawai'i, more particularly identified as Tax Map Key: (2) 3-8-007:104; in the northern section of the undeveloped Wai'ale project, adjacent to the Maui Lani community development. After full build out, the Complex will comprise a quad of four (4) softball fields, a quad of four (4) little league baseball fields, open space areas for multi-use fields such as soccer or rugby fields, two (2) comfort stations, two (2) concession stands, parking areas, pathways and landscaping. The County expressed interest in adding other park elements such as a playground, and soccer playing fields. The layout of the Complex is shown in Exhibit "A".

**II. TERMS**

**A. Completion of the Complex**

1. The State shall complete the construction of the Complex, including Phases 1 through 4, all easement entitlements, design and construction required for the completion of the Complex, subject to legislative appropriation and allotment of funds through the executive budget process sufficient to cover the costs of completing construction of the Complex. Due to available funding, it is understood that the State may not be able to include facilities such as scorer's booths, bleachers, additional lighting and other elements.

**EXHIBIT "B"**

PRELIM. APPR'D.  
Department of the  
Attorney General

2. The State shall continue to update the County on the timeframes for the completion of Phases 2 through 4, including construction schedules and subsequent changes. Estimated timeframes will be provided to the County and any revisions will be forwarded to the County. Phase 1 was completed in March 2016; an estimated timeframe for completing all Phases is attached hereto as Exhibit "B". The County may enter the Complex to conduct site visits and inspections on the areas identified as Phase 2 through 4 of the Complex (or any Phase under construction if Phases are altered), however any site visit or inspection shall be coordinated with the Department of Land and Natural Resources ("DLNR"). The County shall not communicate directly with any contractor procured by the DLNR regarding the construction Project.

**B. Operation, Maintenance and Use of the Completed Phases of the Complex**

1. The Parties agree that the County may enter the completed phases of the Complex and use the completed areas as set forth in this Agreement. DLNR will coordinate with the County for installation of further improvements to Phase 1 so as to ensure use and improvement installations do not conflict.
2. The County shall have the option of using completed facilities in Phases 2 through 4 prior to completion of the respective phases and will be responsible for maintaining such completed phases as set forth in this Agreement.
3. The County shall assume all maintenance responsibilities for any Phase upon commencement of the County's use of the Phase, including but not limited to: Turf and field areas, drainage swales and areas, comfort station cleaning and maintenance, parking and pathway clearing and cleaning, all completed landscaping, irrigation system operation and maintenance, and other facilities.
4. The County shall assume utility costs along with other responsibilities for the completed phases of the Complex unless determined otherwise by written agreement between the Parties. The County shall assume potable water charges in the completed phases.
5. The Parties agree that the County will have full use of the State's irrigation water source, the well and reservoir and appurtenant areas for the operation and maintenance of the turf, field and landscaped areas in the Complex, without any charges for the water usage in return for the County's operation and maintenance of this irrigation water system. The State's irrigation water source, well, and reservoir shall be used by the County solely for irrigation and other water needs of the Complex. Nothing in this Agreement shall be interpreted to limit the State from using water from the State's irrigation water source, well, and reservoir for any purpose, as long as the Complex has sufficient water.
6. The State and County shall coordinate on any unforeseen issues not directly stated in this Agreement as they relate to the development, operation and management of the Complex.



7. The Parties agree to review and discuss operating equipment and expenses during the development of the Complex to support the continued operation and management of the Complex.
8. The Parties will coordinate and develop a safety plan to address restricting public access to construction areas, including placement of safety barriers, signage, traffic control measures or other measures needed to allow use of the completed Phases and prevent intrusion into construction areas. The County shall be solely responsible for maintenance of completed Phases, including implementing any necessary measures to keep users of completed Phases from the phases of the Project that are not yet completed or maintained by the County. The Parties agree that all construction access shall be through the Kuihelani Highway entry and not through the Kamehameha Avenue entry, unless the Kuihelani Highway entry is not reasonably available, as determined by the State, with notification to the County.
9. The County shall assume management of the completed phases of the Complex upon the release and completion of each phase by the State. DLNR shall provide a letter specifying the mutually agreed upon date on which the County shall assume use, operation and maintenance responsibilities of that Phase or portion as provided in this Agreement.
10. The Parties will coordinate any additional rights of entry to allow ingress, egress, or regress for representatives of DLNR and the County necessary to perform the obligations set forth in this Agreement.
11. The Parties agree that the County will be allowed to install and construct improvements that it deems appropriate for the Complex, provided that the County must obtain written approval from the Chairperson of the Board of Land and Natural Resources, which shall not be unreasonably withheld, prior to installation or construction.
12. The Parties acknowledge that upon the State's acceptance of the completed construction, certain warranties will inure to the State for various fixtures, components and elements within the phases, and the County will be responsible for any repairs and replacement of the fixtures, components and elements within areas used by the County that have exceeded or are not covered by the warranties or warranty periods. DLNR and the County shall coordinate on any warranty claims that need to be made.
13. To the extent permitted by law, subject to Maui County Council approval, the County shall be responsible for damages or injury caused by its officers, employees and agents in the course of their employment, to the extent that the County's liability for such damage or injury has been determined by a court or otherwise agreed to by the County, and the County shall pay for such damages and injury to the extent permitted by law. The State shall be responsible, to the extent permitted by law, for damage or injury caused by the State's officers and employees in the scope of their employment provided that the State's liability for such damage or injury has been determined by a court or agreed to by the State, and funds are appropriated by the Hawaii State Legislature and allotted through the executive budget process for that purpose.





### **C. Administration of the Agreement**

1. The State shall be represented by a designated representative as determined by the BLNR Chairperson, who shall represent and act on behalf of the State in administering the terms and conditions of the Agreement.
2. The County shall be represented by a designated representative as determined by the Mayor, who shall represent and act on behalf of the County in administering the terms and conditions of the Agreement.
3. The Parties agree in good faith to cooperate with each other to accomplish the intended goals identified in this Agreement. Cooperation includes, but is not limited to, providing copies or access to documents referenced in this Agreement, providing copies of or access to other relevant and non-confidential documents, and participation in meetings and events as necessary.

### **D. Agreement Period**

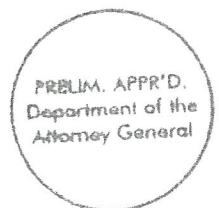
1. The period of time covered by this Agreement shall commence upon execution and shall conclude upon the transfer of the completed Complex to the County or termination of this Agreement by either party with thirty (30) days notice.

### **E. Transfer of the Completed Complex to the County**

1. The Parties intend that upon satisfactory completion of the Complex, the DLNR shall submit to the BLNR a request to approve an executive order to set aside the Complex to the County for recreational park purposes.
2. The County shall acknowledge and comply with all easements placed within and supporting the Complex. The easements are further detailed in Exhibit "C".
3. The irrigation well and reservoir and appurtenant areas comprising of State's water source, shall be retained by the State.
4. The County shall comply with all applicable Federal, State and County regulations, requirements, approvals in regard to any improvements and additional facilities that it develops in the Complex after the transfer.

### **F. Right of Entry**

1. For the term of this Agreement, the State grants the County a right of entry to enter upon the Complex, more particularly identified as Tax Map Key No. (2) 3-8-007:104, shown in Exhibit "A", for operations, maintenance and use of the completed phases of the Complex.



IN WITNESS WHEREOF, State and the County have executed the Agreement by their signatures on the dates below.

**BOARD OF LAND AND NATURAL  
RESOURCES:**

Date MAY 25 2016

By   
SUZANNE D. CASE  
Its Chairperson

APPROVED AS TO FORM:

  
Deputy Attorney General


Date 3/29/16

**COUNTY OF MAUI:**

Date 8/28/15

By   
ALAN ARAKAWA  
Its Mayor

APPROVAL RECOMMENDED:

  
BUTCH KAALA BUENCONSEJO  
Director, Department of Parks  
and Recreation

APPROVED AS TO FORM  
AND LEGALITY:

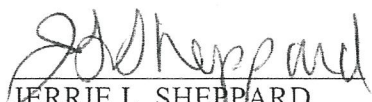
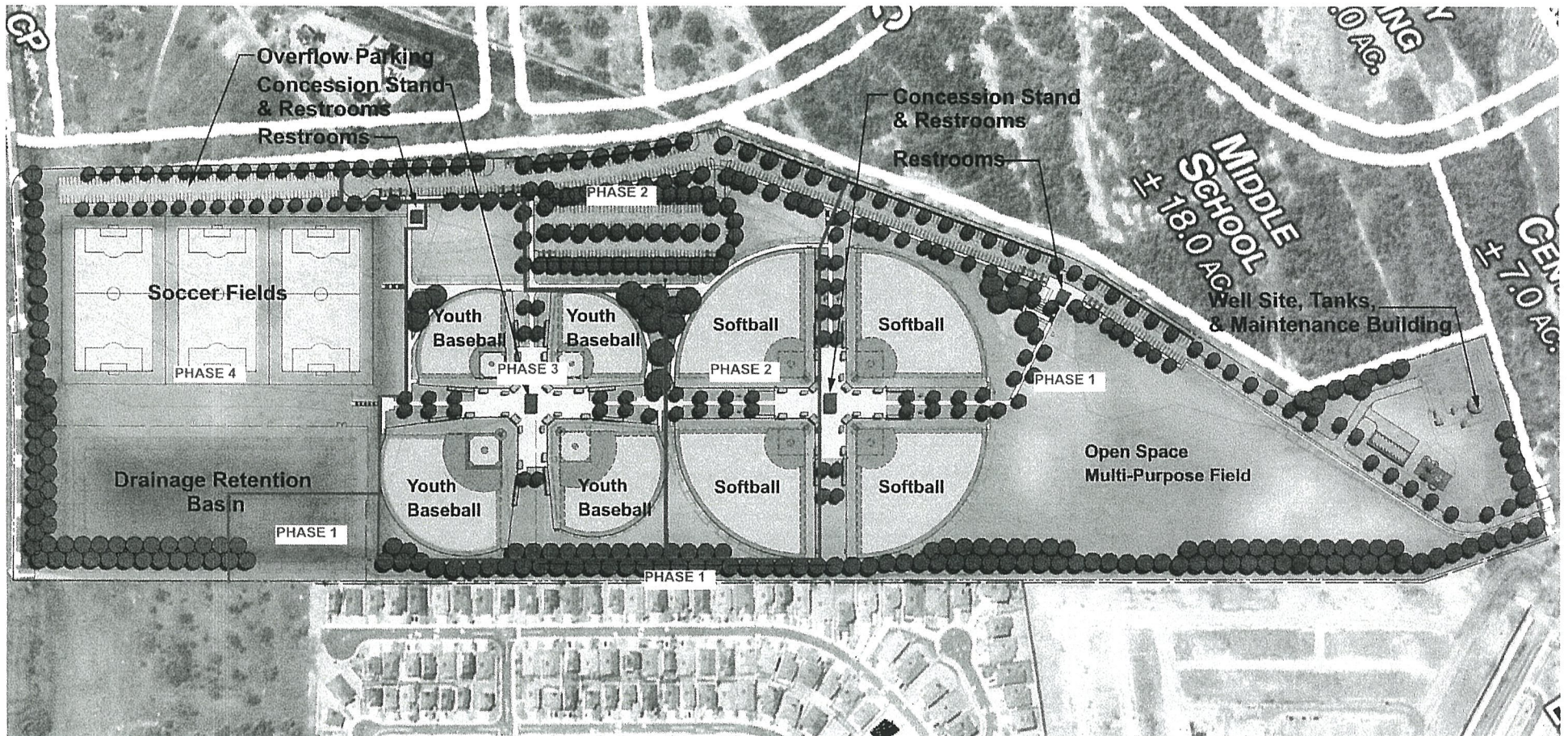
  
JERRIE L. SHEPPARD  
Deputy Corporation Counsel



Exhibit A



Central Maui Regional Sports Complex

- 4 - Softball Fields
- 4 - Youth Baseball Fields
- 3 - Soccer Fields
- 700 Parking Stalls

## CENTRAL MAUI REGIONAL SPORTS COMPLEX

PREPARED BY PBR HAWAII

August 18, 2015



## Exhibit B

### Central Maui Regional Sports Complex: Project Timeframes

Phase * dates are estimated due to on-going contract processing and/or future solicitation and execution	Est/Confirmed Start Date	Est/Confirmed Completion Date – including turf establishment period	Operation and Management Start
Phase 1	August 29, 2014	November 21, 2015 February 18, 2016	February 19, 2016
*Phase 2	November 2015	August 2016 November 2016	November 2016
*Phase 3	Bid solicitation – November 2015 Start date – March/April 2016	April 2017	April 2017
*Phase 4	Start date TBD – funding request currently before the 2016 State Legislature	2017	2017

We note that the completion dates for Phases 3 and 4 are anticipated in mid to late 2017, but factors such as procurement timeframes, contract negotiation/execution, weather conditions, construction delays and other factors may affect the anticipated completion date.



Exhibit C

Easement	Description	Status
Easement 1	40-foot wide access & utility easement provides vehicle and utility access to S. Kamehameha Ave to A&B's boundary at Wai'ale: easement in favor of the State for access and utility, easement is permanent. This easement currently exists and runs with the Pomaikai School deed.	Easement conveyed with the property.
Easement 2A	Landscaping and signage easement in the southwest corner of the property nearest to Kuihelani Hwy: easement in favor of A&B for installation and maintenance of landscaping, signage identifying A&B's project, access, drainage and utilities.	Easement conveyed with the property.
Easement 2B	20-foot wide electrical, drainage, landscaping, signage & construction easement along the west side boundary adjacent to Road C: easement in favor of A&B for installation and maintenance of drainage, landscaping, construction and utilities. The easement must remain in a condition that allows A&B to utilize the easement area for its designated purpose including ensuring the easement width is level with the future Road C sidewalk grade.	Easement conveyed with the property.
Easement 2C	50-foot wide drainage, landscaping, signage & access easement: easement in favor of A&B to remain in a condition that allows A&B to utilize the easement area of at least 15-foot width for future access road and underground drainage line.	Easement conveyed with the property.
Easement 3A	20-foot wide access easement parallel to Easement 2A: easement in favor of the A&B for access in the location controlled by the State.	Easement conveyed with the property.

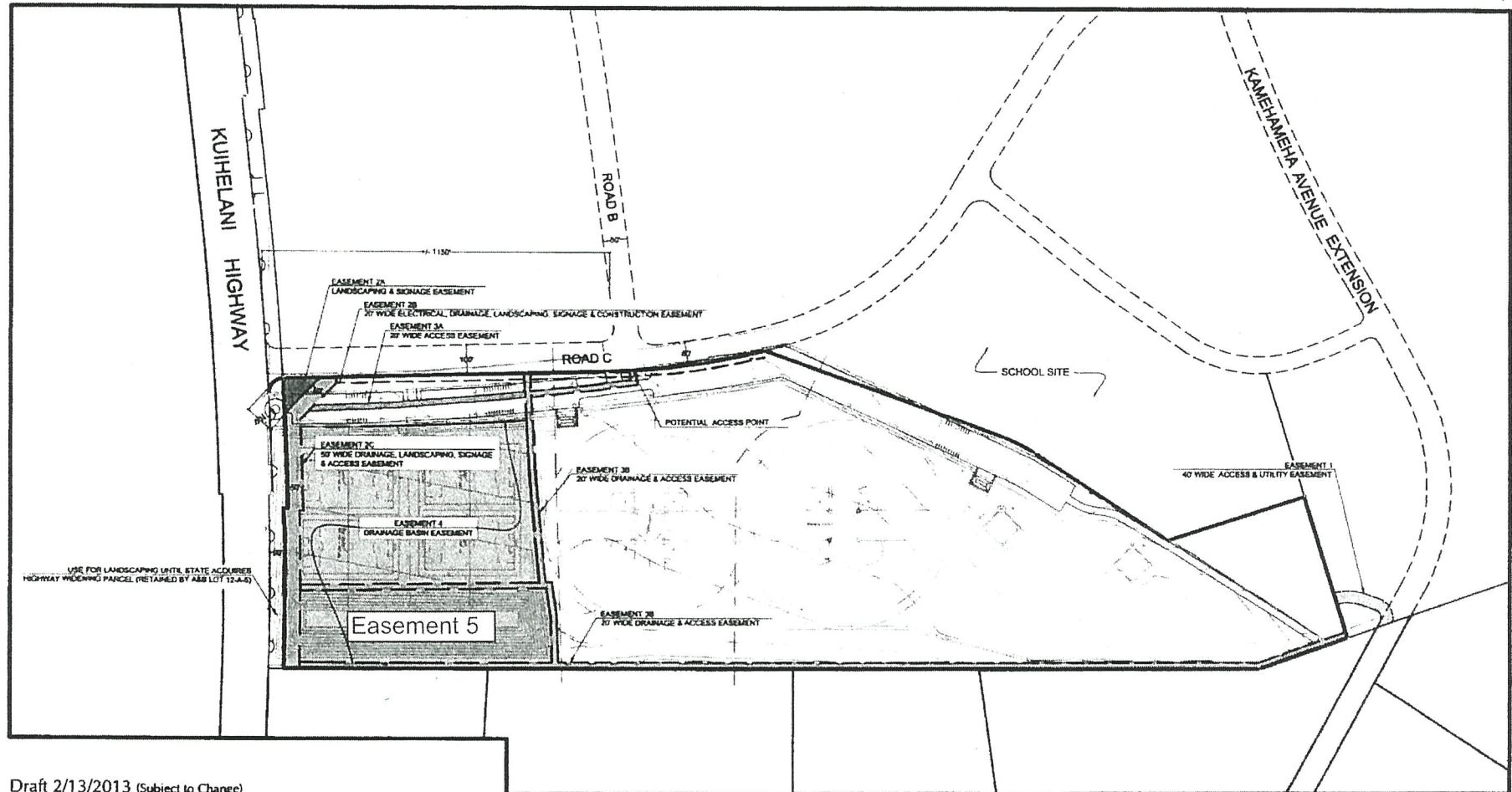


Exhibit C

Easement	Description	Status
Easement 3B	20-foot drainage and access easement located on eastern boundary adjacent to the Maui Lani development: drainage and access easement in favor of A&B to allow at least a 15-foot width portion for this purpose.	Easement conveyed with the property.
Easement 4	Drainage basin easement: the larger areas of the 2 adjacent drainage basins on the west boundary designated for the Wai`ale development. This area has been identified as the soccer playing fields in Phase 3.	Easement conveyed with the property.
Easement 5	Drainage basin easement: the smaller of the 2 adjacent drainage basins designated for the Wai`ale development. This area has been constructed as the primary drainage basin for the Complex in Phase 2..	Easement conveyed with the property.
Easement "6"	MECO easement with A&B: utility easement on A&B property adjacent to the park access from S. Kamehameha Ave.	Easement currently being negotiated between MECO and A&B.
Easement "7"	MECO easement with State: utility easement on park property for MECO access.	Easement currently being negotiated between MECO and DLNR.
Easement "8"	Maui Lani easement with State: sewer line easement from the park parcel to the Traditions mailbox parcel that connects to a storm drain in Meheu Circle to be operated by the County.	Easement currently being negotiated between Maui Lani Partners and DLNR.

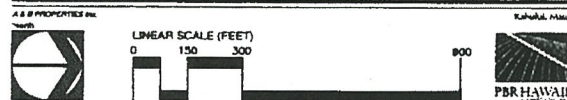
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Exhibit C



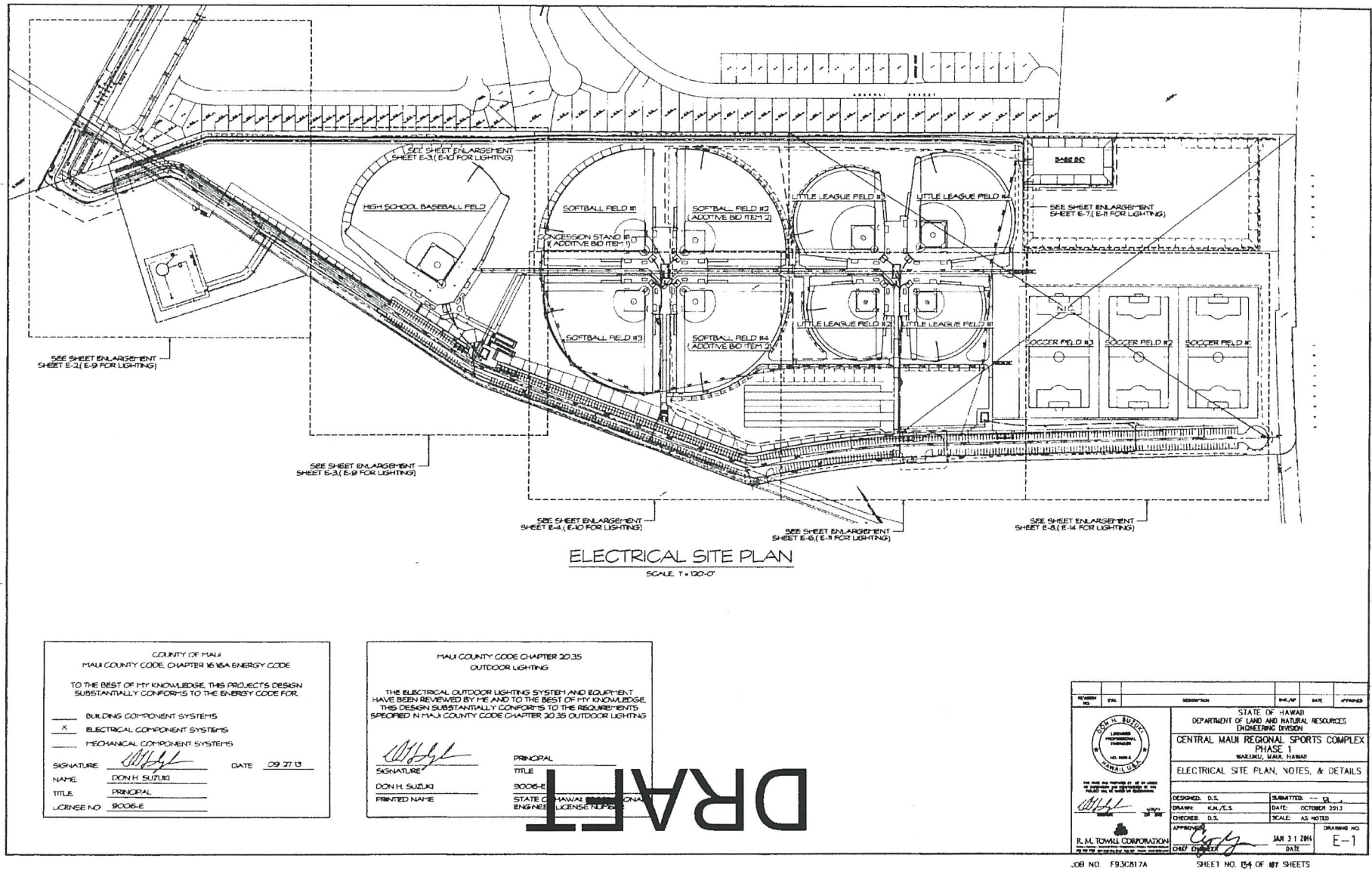
Draft 2/13/2013 (Subject to Change)

## Exhibit C



Disclaimer: This graphic was prepared for general planning purposes only and should not be used for boundary interpretations or other spatial analysis.

	Easement 1		Easement 3A
	Easement 2A		Easement 3B
	Easement 2B		Easement 4
	Easement 2C		





N/e Dedn



STATE OF HAWAII  
BUREAU OF CONVEYANCES  
RECORDED

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/s/ LESLIE T. KOBATA  
REGISTRAR

LAND COURT

REGULAR SYSTEM

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DEPT. OF LAND AND NATURAL RESOURCES  
LAND DIVISION

Total Number of Pages 8

LOD No. S- 29161

Tax Map Key No. (2) 3-8-007:104

### DECLARATION OF RESTRICTIONS

This Declaration of Restrictions is made by and between the State of Hawaii, by its Board of Land and Natural Resources ("Grantor"), whose address is 1151 Punchbowl Street, Honolulu, Hawaii 96813, and the UNITED STATES OF AMERICA, acting by and through the Regional Director, Pacific West Region, National Park Service, U.S. Department of the Interior ("Grantee"), pursuant to the Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended (the "Act"), and regulations and orders promulgated thereunder, whose address is 333 Bush Street, Suite 500, San Francisco, California 94104-2828.

#### Recitals:

A. Grantor is the owner of 65.378 acres of real property known as the Central Maui Regional Sports Complex Park property and located at Waikapu, Maui, as more fully described in Exhibit 1 (the "Replacement Property").

B. This Declaration of Restrictions is made in consideration of the Deed of Release dated of even date herewith between Grantee and Grantor relative to 53.841 acres of real property, more or less, located at former Halawa-Aiea Veterans Housing Area / Aloha Stadium, Honolulu, Oahu, Hawaii, originally conveyed by the United States of America via Quitclaim Deed for public park and recreation area purposes ("Original Property").

C. Grantor has agreed to impose on the Replacement Property, for the benefit of Grantee and its successors and assigns, restrictive covenants to ensure that the Replacement Property will be permanently used solely for public park and recreational purposes.

Agreement:

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor does hereby declare, covenant, and agree, for itself and its successors and assigns, that the said Replacement Property shall hereafter and perpetually be held and conveyed subject to the following conditions and restrictions, to-wit:

1. The Replacement Property shall be used and maintained exclusively for public park and recreational purposes in perpetuity as set forth in the program of utilization and plan contained in Grantor's application submitted on August 5, 2015, and as amended by inclusion of the Program of Utilization Update for the Replacement Property submitted by letter dated June 3, 2016, which program and plan may be amended from time to time at the written request of either the Grantor or Grantee, with the written concurrence of the other party, and such amendments will be added to and become a part of the original application (the "Program of Utilization").
2. The Grantor shall, within 6 months of the date of this Declaration of Restrictions, erect and maintain a permanent sign or marker near the point of principal access to the Replacement Property indicating that the Replacement Property is a park or recreation area and has been acquired in substitution for property acquired from the Federal Government through the Federal Lands to Parks Program of the U.S. Department of the Interior, for use by the general public.
3. The Replacement Property shall not be sold, leased, assigned or otherwise disposed of except to another eligible governmental agency that the Secretary of the Interior approves in writing. Any such disposition shall assure the continued use and maintenance of the Replacement Property for public park or public recreational purposes subject to the same terms and conditions in this Declaration of Restrictions. Any mortgage, lien, or any other encumbrance not wholly subordinate to the interest of the Grantee in this Declaration of Restrictions shall constitute an impermissible disposal. However, this provision shall not preclude the Grantor, its successors and assigns from issuing revenue or other bonds related to the use of the Replacement Property to the extent that such bonds shall not in any way restrict, encumber, or constitute a lien on the Replacement Property. Furthermore, this provision shall not preclude the Grantor from providing related recreation facilities and services compatible with the approved application through concession agreements, permits, and licenses entered into with third parties, provided prior concurrence to such agreements is obtained in writing from the National Park Service.
4. Funds generated on the Replacement Property may not be expended for non-recreational purposes. Until the Replacement Property has been fully developed in accordance with the Program of Utilization, all revenues generated on the Replacement Property must be used for the development, operation, and maintenance of the Replacement Property. After the Replacement Property has been fully developed in accordance with the Program of Utilization, revenue generated by the Replacement Property may be expended on other recreation properties operated by Grantor.



5. From the date of this Declaration of Restrictions, the Grantor, its successors and assigns, shall submit biennial reports to the National Park Service, setting forth the use made of the Replacement Property during the preceding two-year period, and other pertinent data establishing its continuous use for the purposes set forth above, for ten consecutive reports or as further determined by the Secretary of the Interior.
6. Grantor further covenants and agrees for itself, its successors and assigns, that: (1) any use, operation, program or activity on or related to the Replacement Property will be conducted in compliance with all Federal laws and regulations relating to nondiscrimination, including but not limited to the following laws and regulations as such may be amended from time to time: (a) the regulations of the U.S. Department of the Interior at 43 CFR Part 17, (b) Title VI of the Civil Rights Act of 1964, (c) Title III of the Age Discrimination Act of 1975, (d) Section 504 of the Rehabilitation Act of 1973, and (e) the Architectural Barriers Act of 1968; (2) this covenant shall be subject in all respects to the provisions of said laws and regulations; (3) the Grantor, its successors and assigns, will promptly take and continue to take such action as may be necessary to effectuate this covenant; (4) the United States shall have the right to seek judicial enforcement of this covenant; (5) the Grantor, its successors and assigns, will (a) obtain from each other person (any legal entity) who, through contractual or other arrangements with the Grantor, its successors or assigns, is authorized to provide services or benefits on or in connection with the Replacement Property, a written agreement pursuant to which such other person shall, with respect to the services or benefits which he is authorized to provide, undertake for himself the same obligations as those imposed upon the Grantor, its successors and assigns, by this covenant, and (b) furnish a copy of such agreement to the Secretary of the Interior or his successor or assign; (6) this covenant shall run with the land hereby conveyed, and shall in any event, without regard to technical classification or designation, legal or otherwise, be binding to the fullest extent permitted by law and equity for the benefit of, and in favor of the Grantee and enforceable by the Grantee against the Grantor, its successors and assigns; and (7) the Grantee shall have a right of access to, and entrance upon, the Replacement Property in order to determine compliance with the terms of this conveyance.
7. The Grantor, its successors and assigns, shall indemnify, defend, protect, save and hold harmless the Grantee, its employees, officers, attorneys, agents, and representatives from and against any and all debts, duties, obligations, liabilities, law suits, claims, demands, causes of action, damages, losses, costs, and expenses (including without limitation attorneys' fees and expenses, consultant fees and expenses, expert fees and expenses, and court costs) arising out of any claim for personal injury or property damage (including death, illness, or loss of or damage to real or personal property or economic loss) that relates to the Grantor's failure to comply with the terms of this Declaration of Restrictions or from the use or occupancy of the Replacement Property by the Grantor, its successors, assigns, transferees, or agents.
8. In the event that there is a breach by the Grantor, its successors or assigns, of any of the covenants, conditions, restrictions, and agreements set forth herein, whether caused by the legal or other inability of the Grantor, its successors or assigns, to perform said covenants, conditions, restrictions or agreements, the Grantee will give written notice, with a reasonable time stated therein, of such breach together with the actions required by Grantee in order to cure said breach. In the event Grantee, its successors or assigns, fails to cure such breach within the

designated time frame set forth in the written notice, Grantor, for itself, its successors and assigns, covenants and agrees that Grantee shall be entitled to the following alternative remedies:

- a. Grantor, or its successors and assigns, shall deliver to Grantee a general warranty deed to the Replacement Property and shall allow Grantee the immediate right to reenter and take possession of the Replacement Property. Final acceptance of such deed shall be at the sole option of the Grantee.
  - b. In the event Grantor, its successors and assigns, fails to comply with the remedy provided in Section 8(a) above, Grantor, for itself and its successors and assigns covenants and agrees that Grantee shall have the right to prosecute and complete a Quiet Title and Ejectment action, or other reasonably equivalent appropriate action, in a federal court of competent jurisdiction against Grantor, its successors and assigns and any other party-in-interest to the Replacement Property so that Grantee can acquire title and possession of the Replacement Property. By executing this Declaration of Restrictions, Grantor, for itself and its successors and assigns, hereby confesses judgment to Grantee to enable Grantee to complete such judicial proceedings. In addition, Grantor, for itself and its successors and assigns, agrees to pay Grantee all costs associated with any such judicial proceedings incurred by Grantee in acquiring title and possession of the Replacement Property.
  - c. Until Grantee acquires and accepts title and possession to the Replacement Property at its sole option and in accordance with the terms of Section 8(a) or 8(b) above, Grantor, for itself and its successors and assigns, covenants and agrees to be fully responsible to provide protection to and maintenance of said property at all times until such time as the title is actually accepted by the Grantee, including the period of any notice of intent to exercise Grantee's rights. Such protection and maintenance shall, at a minimum, conform to the standards prescribed by the General Services Administration in its regulations 41 CFR 102-75.690 as such may be amended.
9. The failure of the Grantee to require in any one or more instances complete performance of any of the conditions or covenants shall not be construed as a waiver or relinquishment of such future performance, but the obligation of the Grantor, its successors and assigns, with respect to such future performance shall continue in full force and effect.
  10. The National Park Service and any representative it may so delegate shall have the right of entry upon the Replacement Property at all reasonable times to conduct inspections of the Replacement Property for the purposes of evaluating the Grantor's compliance with the terms and conditions of this Declaration of Restrictions.
  11. The covenants, conditions, and restrictions set forth herein are intended to be covenants running with the land in accordance with all applicable law and shall burden and run with the Replacement Property and every part thereof or interest therein, and shall be binding on Grantor, its successors, assigns, and every successor in interest to all or any part of the property, and shall benefit Grantee and Grantee's successors and assigns. All restrictions and conditions contained herein are for the sole benefit of the United States of America and may be modified

or abrogated by the Secretary of the Interior, or his successor in function, as provided by the Act.

To indicate their agreement to the provisions contained in this Declaration of Restrictions, Grantor and Grantee have caused this instrument to be executed by their duly authorized representatives effective as of February 2, 2017.

**Grantor:**

State of Hawaii

By

  
SUZANNE D. CASE

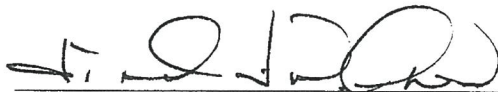
Chairperson

Board of Land and Natural Resources

Approved by the Board of Land and Natural Resources at its meeting held on

October 14, 2016

APPROVED AS TO FORM:



LINDA L.W. CHOW

Deputy Attorney General

Dated:

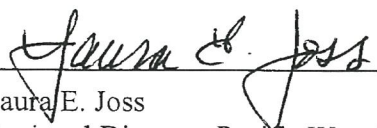
Jan. 24, 2017

**Grantee:**

UNITED STATES OF AMERICA

Acting by and through the Secretary of the Interior

By

  
Laura E. Joss

Regional Director, Pacific West Region

National Park Service

Date

2/2/2017



ACKNOWLEDGEMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California                    )  
  ) ss.  
County of San Francisco            )

On February 2, 2017 before me, Trish Casey, Notary Public

personally appeared Laura E Joss, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same ~~his/her/their~~ authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS, my hand and official seal.

Trish Casey SEAL:  
(Signature of Notary Public)



**Exhibit 1**  
**Replacement Property**

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Grant 3152 to Henry Cornwell and Royal Patent Grant 3343 to Claus Spreckels) situate, lying and being at Waikapu and Wailuku Commons, Wailuku, Island and County of Maui, State of Hawaii, being LOT 12-A-3, same being a portion of Lot 12-A of Maui Lani Subdivision, as shown on Subdivision Map File No. 3.2226, approved by County of Maui, on October 24, 2013, and thus bounded and described as per survey dated January 7, 2013:

Beginning at the northwesterly corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 6,177.64 feet south and 2,707.87 feet east and running by azimuths measured clockwise from true South:

- |    |              |          |   |
|----|--------------|----------|---|
| 1. | 284° 48' 20" | 306.74   | feet along Lots 155, 62, 61, 58 and 57 of Maui Lani Phase 7, Increment 4 Subdivision (F.P. 2473);   |
| 2. | 304° 00'     | 3,214.71 | feet along Lots 57 to 36, inclusive of the Maui Lani Phase 7, Increment 4 Subdivision (F.P. 2473) and Lots 137 to 133, inclusive and Lots 127 to 122, inclusive of the Maui Lani Phase 7, Increment 3 Subdivision (F.P. 2442) and Lots 67 to 48, inclusive of the Maui Lani Phase 7, Increment 2 Subdivision (F.P. 2433) and Lot 11-C-2 of the Maui Lani Development Subdivision; |

Thence along the northwesterly side of Kuihelani Highway (F.A.S.P. No. S-0380(4)) (being along Road widening Lot 12-A-5 of the Maui Lani Subdivision) on a curve to the left with a radius of 11,612.16 feet, the chord azimuth and distance being:

- |    |                |        |                  |
|----|----------------|--------|------------------|
| 3. | 34° 00' 53.15" | 527.70 | feet;            |
| 4. | 122° 42' 46"   | 12.00  | feet along same; |

Thence along same on a curve to the left with a radius of 11,624.16 feet, the chord azimuth and distance being:

- |    |             |        |       |
|----|-------------|--------|-------|
| 5. | 31° 39' 26" | 428.28 | feet; |
|----|-------------|--------|-------|

Thence along the remainder of Lot 12-A-1 of the Maui Lani Subdivision on a curve to the right with a radius of 50.00 feet, the chord azimuth and distance being:



6. 121° 39' 45" 1.64 feet;
7. 122° 36' 1,065.80 feet along the remainder of Lot 12-A of the Maui Lani Subdivision;
- Thence along same on a curve to the left with a radius of 2,380.87 feet, the chord azimuth and distance being:
8. 116° 18' 522.53 feet;
9. 144° 04' 840.97 feet along the remainder of Lot 12- A-1 of the Maui Lani Subdivision;
- Thence along same on a curve to the right with a radius of 503.22 feet, the chord azimuth and distance being:
10. 150° 30' 50" 113.01 feet;
11. 156° 57' 40' 526.93 feet along the remainder of Lot 12-A of the Maui Lani Subdivision;
12. 106° 11' 470.00 feet along same;
13. 196° 55' 490.95 feet along same to the point of beginning and containing an area of 65.378 acres, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED WITH RESERVATION OF EASEMENTS, COVENANTS, RESERVATIONS AND RESTRICTIONS

GRANTOR : ALEXANDER & BALDWIN, LLC, a Hawaii limited liability company  
GRANTEE : STATE OF HAWAII, by and through its BOARD OF LAND AND  
NATURAL RESOURCES  
DATED : as of June 26, 2014  
RECORDED : Document No. A-52900488