

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

August 21, 2012

CERTIFIED MAIL – #7010 3090 0000 4921 1726

Mr. Michael T. Munekiyo, AICP, President
Munekiyo & Hiraga, Inc.
305 High Street, Suite 104
Wailuku, Hawaii 96793

Dear Mr. Munekiyo:

SUBJECT: SPECIAL MANAGEMENT AREA (SMA) ASSESSMENT FOR THE PROPOSED MARTIN RESIDENCE, AT LOT 46-A, OLOWALU MAKAI-HINA SUBDIVISION, OLOWALU, ISLAND OF MAUI, HAWAII; TMK: (2) 4-8-003:046 (SMX 2012/0240) (SM5 2012/0275)

The Department of Planning (Department) has reviewed the SMA Assessment for the above-referenced project, including additional information provided to the Department on June 8, 2011. In a letter dated April 3, 2009, the Department informed the Applicant that it was unable to process the SMA Application and thus would not complete the Assessment because, as stated, "Section 12-202-12(f)(5) of the SMA Rules for the Maui Planning Commission (Commission) provides that an application 'cannot be processed because the proposed action is not consistent with the county general plan, community plan, or zoning, unless a general plan, community plan, or zoning application for an appropriate amendment is processed concurrently with the SMA Permit application.'" As a result of this decision, the Applicant subsequently submitted a Community Plan Amendment (CPA) application on August 27, 2010, for a change of designation from Open Space to Agriculture in order to address the land use inconsistency.

The Department, at this time, has completed a subsequent SMA Assessment based on additional information provided by the Applicant as well as additional research conducted by the Department. As such, the Department notes that this Assessment supersedes the Department's April 3, 2009 letter (SMX 2008/0330).

PROJECT DESCRIPTION AND ITEMIZED ANALYSIS

FLOOD HAZARDS

The proposed action is to construct a one-story, 3,495 square foot (MDA), slab-on-grade, single family dwelling (SFD) on the above 0.800 acre parcel. The parcel is not a shoreline parcel as there is a private parcel fronting the makai boundary. All

Mr. Michael T. Munekiyo, AICP, President
August 21, 2012
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development is to be constructed outside of the Shoreline Setback Area as represented in site maps in the SMA Application. Access from the property will be from a private driveway located on the mauka side of the parcel and related utilities will be installed. The structure is proposed to be built within an "AE" Flood Hazard Zone. The Applicant states the proposed dwelling will be built in compliance with Maui County Code Chapter 19.62 (Flood Hazard Area).

PUBLIC VIEWS AND VIEW PLANE ANALYSIS

The subject property is located makai of Honoapi'ilani Highway, approximately 500-600 feet to the highway right-of-way. There is currently thick vegetation and brush along the corridor of the highway and within the surrounding area of the project, planted by the subdivision owner, which significantly curtails vertical and lateral views to the shoreline from the highway. The proposed structure is proposed to be built approximately 100-feet from the shoreline which should minimize concerns of impacts on views.

HISTORIC CONSIDERATIONS

An archaeological inventory survey report of Olowalu lands, including the subject property and surrounding area, was conducted by Xamanek Researches in 2000. According to the approval issued by the Department of Land and Natural Resources--State Historic Preservation Division (DLNR-SHPD) on February 25, 2000, and its accompanying map identifying significant archaeological sites, there are no known surface or subsurface archaeological resources within the project site.

GENERAL PLAN, ZONING AND COMMUNITY PLAN

The property is designated "Open Space" in the West Maui Community Plan. The State Land Use designation is Conservation and Agriculture; the County zoning is A-2 (Apartment 2).

Chapter 205A-22, Hawaii Revised Statutes (HRS) provides definitions to be used in the SMA Section of Chapter 205A. This section defines what a "Development" is, and what a "Development" is not. Further, Chapter 205A-28 and 29, HRS, authorizes each county to be the authority in the SMA and to adopt rules to administer the SMA permit application processing procedures.

It is noted that the State of Hawaii, Board of Land and Natural Resources (Board) was the accepting authority for the Applicant's Environmental Assessment (EA) which was done for a Conservation District Use Permit (CDUP) to build a SFD in the State Conservation district.

Mr. Michael T. Munekiyo, AICP, President
August 21, 2012
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Based on the review and subsequent Finding of No Significant Impact (FONSI) issued by this Board for this proposed project, the conditions set forth within the CDUP approval dated April 21, 2011, and additional research by the Department, it is determined that the proposal to build a SFD meets the exemption of not a "Development", provided in Chapter 205A-22. It is further determined that the proposed project does not meet the criteria of being a development in that it does not have a cumulative impact, or a significant environmental or ecological effect on the SMA.

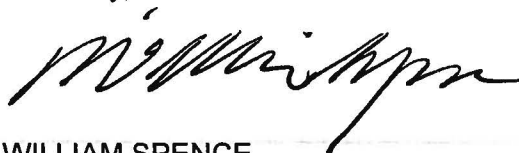
SMA ASSESSMENT

In conclusion, the proposed activity (construction of a SFD) has been determined not to be a development and *is exempt from the applicable requirements of Chapter 205A*. The requirement for a CPA to meet consistency is therefore null and void. The Department will close the application for the CPA (CPA 2010/0004).

The Planning Director's final decision may be appealed pursuant to Subsection 12-202-26 of the SMA Rules for the Commission, which states, "Appeal of director's decision; filing the notice of appeal. (a) Appeal of the director's decision may be made to the commission by the filing of a notice of appeal with the department not later than ten days after the receipt of the director's written decision, or, where the director's decision is not required by the commission or these rules to be served upon appellant, not later than ten (10) days after the meeting at which the commission received notification of the director's decision. The notice of appeal shall be filed in accordance with Section 12-201-20 of the rules of practice and procedure for the Maui planning commission. The department shall notify the commission, at the commission's next regularly scheduled meeting, of the notice of appeal."

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Kathleen Ross Aoki at kathleen.aoki@mauicounty.gov or at (808) 270-5529.

Sincerely,



WILLIAM SPENCE
Planning Director

Mr. Michael T. Munekiyo, AICP, President
August 21, 2012
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xc: Michele Chouteau McLean, Deputy Planning Director (PDF)
Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Aaron H. Shinmoto, PE, Planning Program Administrator (PDF)
John F. Summers, Planning Program Administrator (PDF)
Kathleen Ross Aoki, Staff Planner (PDF)
Development Services Administration
Samuel J. Lemmo, Administrator, Department of Land and Natural Resources—Office of
Conservation and Coastal Lands
Peter Martin, Applicant
CZM File (SMX)
CPA 2010/0004 (KIVA Document/Project File)
SMX 2008/0330 (KIVA Document)
Project File
General File

WRS:KRA:nt

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CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

KATHLEEN ROSS AOKI
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 17, 2009

Mr. Mark Alexander Roy
Munekiyo & Hiraga, Inc.
305 High Street, Suite 104
Wailuku, Hawaii 96793

next door

Dear Mr. Roy:

**SUBJECT: POSELEY LOT 47-A, AT OLOWALU, ISLAND OF MAUI, HAWAII;
TMK: (2) 4-8-003:047**

The Department of Planning (Department) is in receipt of your May 13, 2009 letter (Letter) providing additional information on the location of the Poseley Property (Property) in relation to the proposed Urban Growth Boundary (UGB) in the Draft Maui Island Plan that is part of the 2030 General Plan Update. Additionally, the Letter requested an interpretation of the Department's policy regarding the processing of Community Plan Amendments (CPA's) during the 2030 General Plan Update.

The Property is located outside of the proposed UGB for Olowalu. This determination was made after reviewing the Geographic Information System (GIS) Map, identified as Attachment B in the Letter, provided by the Department's Long Range Division, identifying the proposed UGB for Olowalu. As shown on Attachment B, a small portion of the Property appears to be located within the proposed UGB. However, taking into consideration the broad brush of the proposed UGB, the Department is being conservative in determining that the Property is located outside of the UGB.

In January 2008, the Department established its policy on CPA's during the 2030 General Plan Update. The Department will support a proposed project that requires a CPA, if it meets the following:

- A. The proposed project offers a substantial public benefit, and if it is a private project, the public benefits are far above what would be required based on existing ordinances, policies, and other regulations; and
- B. The project's impact (due to scale, location, etc.) would not be significant.

The Department will not support an application for a CPA for the Property at this time, as it will not offer a substantial public benefit as well as due to its location and potential for cumulative impacts. This Property is one of many coastal properties in Olowalu with similar land use inconsistencies. This is not an isolated case, rather it can be the beginning of a number of CPA applications for this location that may be significant in changing the intent of the existing Community Plan designations.

Mr. Mark Alexander Roy
June 17, 2009
Page 2

The Department's position does not preclude the Poseley's from applying for a CPA with the Department. With a CPA application, the Poseley's will have an opportunity to argue their case before both the Maui Planning Commission (Commission) and the Maui County Council. Conversely, the Poseley's can request the Department to revisit the proposed project, once the Commission has completed the review of the Draft Maui Island Plan.

Thank you for your cooperation. Should you require further clarification, please contact Staff Planner Robyn Loudermilk by email at robyn.loudermilk@mauicounty.gov or at 270-7180.

Sincerely,

A handwritten signature in black ink that reads "Jeffrey S. Hunt". The signature is written in a cursive style and is positioned above the printed name.

JEFFREY S. HUNT, AICP
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator
Robyn L. Loudermilk, Staff Planner
Project File
General File

JSH:RLL:vb
K:\WP_DOCS\PLANNING\RFC\2009\0089PoselyLotOlowalu\Response.doc



10/27/23

MICHAEL T. MUNEKIYO
GWEN OHASHI HIRAGA
MITSURU "MICH" HIRANO
KARLYNN FUKUDA

'10 AUG 27 A11:35

MARK ALEXANDER ROY

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

August 27, 2010

Kathleen R. Aoki, Director
Department of Planning
County of Maui
250 South High Street
Wailuku, Hawaii 96793

SUBJECT: Transmittal of a Community Plan Amendment application for Property Identified as Lot 46-A, Olowalu Makai-Hina Subdivision, Olowalu, Maui, Hawaii, TMK: (2)4-8-003:046

Dear Ms. Aoki:

Please find attached an original plus one (1) copy of a Community Plan Amendment application for property identified as Lot 46-A, Olowalu Makai-Hina Subdivision, Olowalu, Maui, Hawaii, Tax Map Key No. (2) 4-8-003:046. This application is being filed in response to the Maui Planning Department's letter dated April 3, 2009.

This request for a Community Plan Amendment (CPA) from "Open Space" to "Agriculture" follows from discussions held with the Current Planning Division on April 16, 2010 and April 20, 2010. During these discussions, the Department advised that a CPA from "Open Space" to "Agriculture" would achieve land use consistency requirements for the proposed single-family residence provided that a Conservation District Use Permit (CDUP) is obtained. Please note that the Board of Land and Natural Resources (BLNR) issued a CDUP for the proposed single-family residence on August 8, 2008. A copy of the letter is attached in Section 12, Land Use History, of the application.

Please find attached, under separate cover one (1) original mylar map, a metes and bounds description, and a check in the amount of \$3,575.00 (Check No. 1015) made payable to the County of Maui.





10 APR 52 11:32

10 APR 52 11:32

Kathleen R. Aoki, Director
August 27, 2010
Page 2

We appreciate your attention to this matter. Please contact me by phone at 244-2015 or by email at kivette@mhplanning.com, regarding any additional information or materials needed to process the application.

Very truly yours,



Kivette Koeppe, Planner

KK:lh

cc: Peter Martin

F:\DATA\Martin\Olowalu\Lot 46A\Planningrequest.ltr



24.63

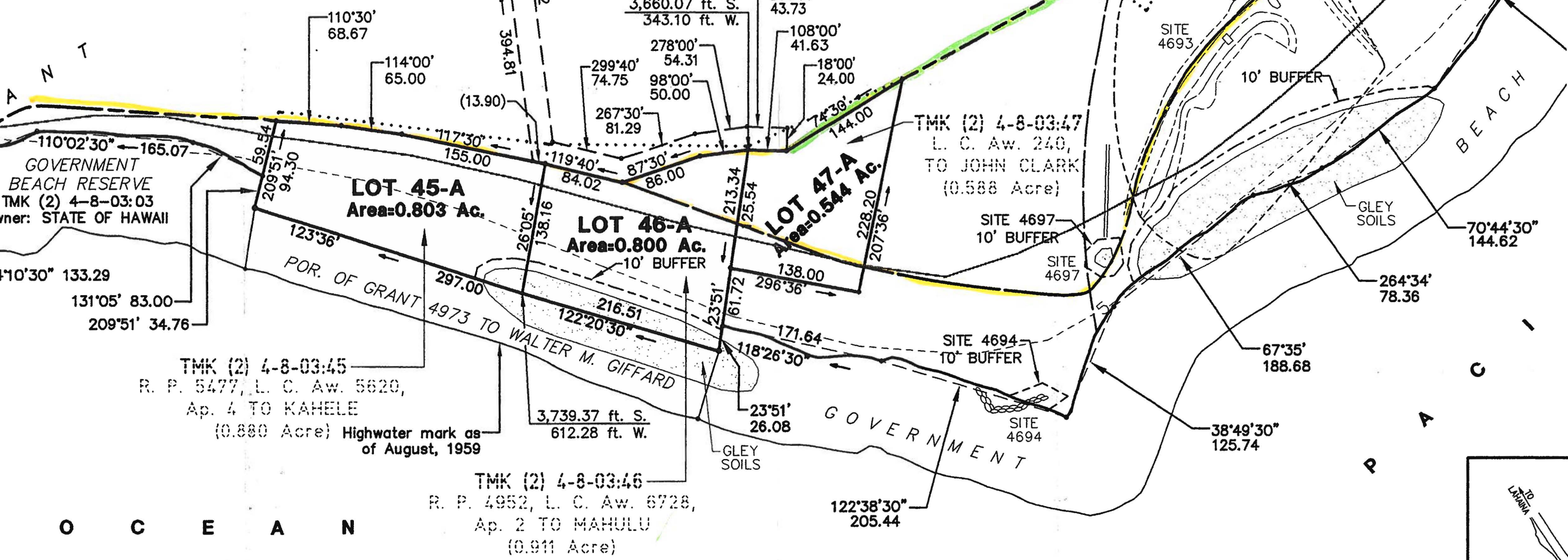
T. M. K. (2) 4 - 8 - 0 3 : 8 4

L. C. Aw. 3532,
Ap. 1 TO MINAMINA
(0.792 Acre)

EASEMENT C
(0.055 Acre)

LOT 84-A
(SEE AREA SUMMARY BELOW)

A R E A = 2 8 . 6 1 A c r e s



O C E A N

P A R A G

Certified to be a true and correct copy of the original
recorded on 9/29/04 at 8:06a in the
Office of the Assistant Registrar of the Land Court as
Document No. _____ /Transfer Certificate of
Title No. _____ and/or in the Bureau of
Conveyances as Document No. 2004-19690
By: [Signature]
FIRST HAWAII TITLE CORPORATION

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Olowalu Elua Associates
33 Lono Ave., Ste 450
Kahului, HI 96732

20303595-DW
163466

TDW/85534

Total No. of Pages: _____

TMK (2) 4-8-3:46

DECLARATION OF EASEMENTS
LOT 46-A OLOWALU MAKAI-HIKINA SUBDIVISION

This Declaration is dated this 10th day of September 2004 and is
executed by OLOWALU ELUA ASSOCIATES LLC, a Hawaii limited liability
company, of 33 Lono Avenue, Suite 450, Kahului, Hawaii 96732 ("Olowalu").

RECITALS: Olowalu owns Lot 46-A of the Olowalu Makai-Hikina
Subdivision, more particularly described on Exhibit "A" attached hereto and made a
part hereof (the "Property"). Olowalu is also the owner of the land underlying
Easements "A" and "B", described on Exhibits "B" and "C", respectively, attached
hereto and made a part hereof (hereinafter referred to as "Easement A" and
"Easement B", respectively). Finally, Olowalu is the owner of the land underlying
Easement "F" as described on Exhibit "D" attached hereto and made a part hereof
(hereinafter referred to as "Easement F").

The purpose of this Declaration of Easements is to establish certain perpetual easements in favor of the Property which shall bind Olowalu and its successors and assigns as the owners of the land encumbered by the easements and shall inure to the benefit of the Property and its existing and future owners as easements which shall run with the land.

Reference to "Olowalu" shall mean Olowalu Elua Associates LLC and its successors in interest as owner(s) of all or any part of the land encumbered by any or all of Easements A, B or F.

Reference to the "owner" of the Property or "Property owner" shall mean the owner or owners of the Property and his, her or their successors in title to the Property in the future.

EASEMENTS: Olowalu hereby grants and establishes the following easements for the benefit of the Property:

1. Easements For Access and Utilities. A non-exclusive perpetual easement for access and utilities is hereby granted and established over Easement A and Easement B for the benefit of the Property. Said easement shall include the following rights:

- (a) To pass and repass on foot and in vehicles and for general driveway access purposes;
- (b) To install, operate, maintain, repair and replace water and sewer lines and wires and lines for electricity, telephone, cable TV and other utilities;
- (c) To construct, maintain and operate a driveway or access roadway as needed for the reasonable use and exercise of the easement rights granted hereby, and subject to all the terms and conditions set forth below; and
- (d) To grant to the County of Maui or any public utility provider easements for the installation, repair and replacement of sewer lines, water lines, electrical lines, cable TV, telephone and other utility services to serve one or more lots.

Olowalu reserves the right to relocate and reconfigure all or any portion of Easement A and Easement B as needed at any time and from time to time in order to accommodate the intended use and development of the

encumbered land, provided, however, that (A) each relocation and reconfiguration shall be exercised by, and shall become effective upon, the execution and recording in the State of Hawaii Bureau of Conveyances by Olowalu (acting unilaterally without requiring the joinder of the Property owner) of an amendment to this grant of easement, which shall set forth the surveyed metes and bounds description of the relocated or reconfigured easement; (B) the easement as relocated or reconfigured shall provide reasonably convenient access and utilities to serve the Property; and (C) if the easement prior to relocation or reconfiguration shall have been improved by the Property owner by any pavement or utility installations, Olowalu shall relocate said pavement and utility services to the relocated or reconfigured easement at no cost to the owner of the Property and within a time frame which shall minimize any inconvenience and interruption of access and utility services to the owner of the Property.

2. Landscaping Easement Along the Shoreline. Olowalu hereby grants and establishes an exclusive perpetual easement on and over Easement F for the benefit of the Property and for the following purposes: to plant and maintain grass and landscaping and to use and enjoy the easement area as open space, view corridor, and for pedestrian access between the Property and the ocean.

The easement shall be subject to the following conditions:

(a) As an exception to the Property owner's "exclusive" rights granted above, Olowalu hereby reserves the right to establish and grant to others, in Olowalu's sole discretion, the right to pass and repass along the shore and within the easement area, as a lateral shoreline path for the benefit of any person(s) or the general public. Olowalu may exercise this right at any time by executing and recording in the State of Hawaii Bureau of Conveyances a grant or declaration of easement in favor of said persons or the public, and said grant shall become effective notwithstanding the fact that the owner of the Property shall not have joined in or executed said grant; and

(b) Without limiting the generality of Section 3 below, the owner of the Property shall not erect any "structures" within the easement area or alter the level or topography of the easement area in any manner which would violate the County of Maui's laws, rules and regulations governing shoreline activities, including but not limited to the shoreline setback ordinance and the Special Management Area regulations of the County of Maui.

3. Terms and Conditions Applicable to All Easements Hereunder. All

easements established under this Declaration shall be governed by and subject to the following terms and conditions:

(a) The Property owner in exercising any of said owner's rights under any or all of these easements shall observe and perform all laws, ordinances, rules and regulations now or hereafter imposed by any governmental authority which are applicable to the easement area, shall complete construction of all permitted improvements in the easement area free and clear of all liens and claims, and shall promptly upon completion of any such improvements restore the surface of the easement area to even grade and good and orderly condition.

(b) The owner(s) of the Property shall indemnify, defend and hold harmless Olowalu from and against all claims, losses, liabilities and expenses of every kind, including attorney's fees, which Olowalu may suffer or incur or which may be asserted against Olowalu and which shall arise out of any act or omission by the indemnifying party or by the agents, tenants, guests or licensees of the indemnifying party which shall occur within any easement area or shall arise out of the exercise of any easement rights established by this Declaration by the Property owner or said owner's agents, tenants, guests or licensees.

(c) The Property owner shall include the easement area within the coverage of the Property owner's general liability insurance policy covering the Property and each such policy shall name Olowalu as named insured. The amount and terms of coverage shall be commercially reasonable and the Property owner shall change or increase the terms or amount of coverage as Olowalu may require from time to time consistent with normal and prudent risk management practices and commercially reasonable coverage amounts and terms, from time to time.

(d) Each easement shall be governed by and construed under the laws of the State of Hawaii.

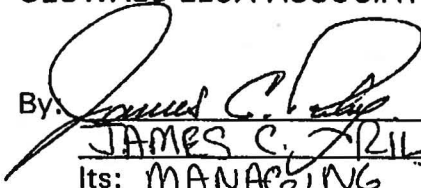
(e) In the event of any litigation arising out of or concerning the Property owner's compliance with or breach of any of the terms or conditions of any of the easements established hereunder, the prevailing party in such litigation shall be entitled to recover from the non-prevailing party all costs, expenses and reasonable attorney's fees incurred by the prevailing party.

(f) The Property owner accepts each easement designated

hereunder and each easement area in "as is" condition without any representations or warranties express or implied by Olowalu as to the physical conditions thereof or the suitability of the easement area for the purposes of the designated easement or any proposed improvements therein.

Executed the day and year first above written.

OLOWALU ELUA ASSOCIATES LLC

By: 
JAMES C. RILEY
Its: MANAGING DIRECTOR

"Olowalu"

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 10th day of September, 2004, before me personally appeared JAMES C. RILEY, 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 capacities shown, having been duly authorized to execute such instrument in such capacities.

15

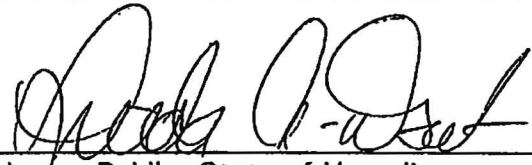

Notary Public, State of Hawaii
Printed Name: LINDA A. DORSET
My Commission Expires: 10/25/04

EXHIBIT "A"

LOT 46-A

OLOWALU MAKAI-HIKINA SUBDIVISION

SITUATED AT OLOWALU, LAHAINA, MAUI, HAWAII

BEING A PORTION OF ROYAL PATENT 4952,

LAND COMMISSION AWARD 6728, APANA 2 TO MAHULU

Beginning at the Southwest corner of this lot, being also the Southeast corner of Lot 45-A, Olowalu Makai-Hikina Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILEA" being 3,739.37 feet South and 612.28 feet West and running by azimuths measured clockwise from true South:

1. 206° 05' 138.16 feet along Lot 45-A, Olowalu Makai-Hikina Subdivision;
2. 299° 40' 84.02 feet along Lot 84-A, Olowalu Makai-Hikina Subdivision;
3. 267° 30' 86.00 feet along Lot 84-A, Olowalu Makai-Hikina Subdivision;
4. 278° 00' 50.00 feet along Lot 84-A, Olowalu Makai-Hikina Subdivision;
5. 23° 51' 213.34 feet along Lot 47-A and Lot 84-A, Olowalu Makai-Hikina Subdivision;
6. 122° 20' 30" 216.51 feet along Grant 4973 to Walter M. Giffard, to the point of beginning and containing an area of 0.800 acre.

END OF EXHIBIT "A"

EXHIBIT "B"

Easement "A" for access and utility purposes affecting Lot 84-A, Olowalu Makai-Hikina Subdivision and described as follows:

Beginning at the Northwest corner of this Easement, being also the Northwest corner of Lot 84-A, Olowalu Makai-Hikina Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILEA" being 2,823.43 feet South and 1,617.37 feet West and running by azimuths measured clockwise from true South:

1. Along Lot 84-B, Olowalu Makai-Hikina Subdivision on a curve to the left with a radius of 1,687.02 feet, the chord azimuth and distance being:

299° 06' 41.4" 100.12 feet;
2. 207° 24' 40" 10.00 feet along Lot 84-B, Olowalu Makai-Hikina Subdivision;
3. Thence, along Honoapiilani Highway on a curve to the left with a radius of 1,677.02 feet, the chord azimuth and distance being:

293° 15' 20" 243.05 feet;
4. Thence, along Honoapiilani Highway on a curve to the left with a radius of 2,222.92 feet, the chord azimuth and distance being:

286° 28' 30" 203.61 feet;
5. 13° 51' 40.00 feet along the remainder of Lot 84-A;
6. Thence, along the remainder of Lot 84-A, on a curve to the right with a radius of 2,262.92 feet, the chord azimuth and distance being:

104° 33' 38" 56.13 feet;

7. Thence, along the remainder of Lot 84-A, on a curve to the right with a radius of 2,262.92 feet, the chord azimuth and distance being:

107° 11' 08" 151.19 feet;

8. 110° 58' 249.77 feet along the remainder of Lot 84-A;

9. 115° 00' 23.70 feet along the remainder of Lot 84-A;

10. Thence, along the remainder of Lot 84-A, on a curve to the left with a radius of 43.00 feet, the chord azimuth and distance being:

85° 00' 43.00 feet;

11. Thence, along the remainder of Lot 84-A, on a curve to the right with a radius of 43.00 feet, the chord azimuth and distance being:

85° 00' 43.00 feet;

12. 205° 00' 90.14 feet along a 50 Feet Wide Right-of-Way Lot to the point of beginning and containing an area of 0.561 acres.

END OF EXHIBIT "B"

EXHIBIT "C"

Easement "B" for access and utility purposes affecting Lot 84-A, Olowalu Makai-Hikina Subdivision and described as follows:

Beginning at the Northeast corner of this Easement, on the Southerly side of Honoapiilani Highway [F.A.P. No. 30(3)], the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILEA" being 3,163.07 feet South and 472.98 feet West and running by azimuths measured clockwise from true South:

1. 8° 30' 437.32 feet along the remainder of Lot 84-A;
2. 299° 40' 74.75 feet along the remainder of Lot 84-A;
3. 267° 30' 81.29 feet along the remainder of Lot 84-A;
4. 278° 00' 54.31 feet along the remainder of Lot 84-A;
5. 288° 00' 43.73 feet along the remainder of Lot 84-A;
6. 18° 00' 24.00 feet along the remainder of Lot 84-A;
7. 108° 00' 41.63 feet along Lot 47-A;
8. 98° 00' 50.00 feet along Lot 46-A;
9. 87° 30' 86.00 feet along Lot 46-A;
10. 119° 40' 84.02 feet along Lot 46-A;
11. 117° 30' 13.90 feet along Lot 45-A;
12. 188° 30' 394.81 feet along the remainder of Lot 84-A;

13. Thence, along the remainder of Lot 84-A, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:

144° 07' 38" 27.97 feet;

14. Thence, along the remainder of Lot 84-A, on a curve to the right with a radius of 2,626.69 feet, the chord azimuth and distance being:

101° 50' 29" 183.88 feet;

15. 103° 51' 426.85 feet along the remainder of Lot 84-A;

16. 193° 51' 40.00 feet along the remainder of Lot 84-A;

17. 283° 51' 426.85 feet along Honoapiilani Highway [F.A.P. No. 30(3)];

18. Thence, along Honoapiilani Highway [F.A.P. No. 30(3)], on a curve to the left with a radius of 2,586.69 feet, the chord azimuth and distance being:

281° 58' 30" 169.27 feet;

19. Thence, along Honoapiilani Highway [F.A.P. No. 30(3)], on a curve to the left with a radius of 1,949.86 feet, the chord azimuth and distance being:

279° 18' 54.45 feet to the point of beginning and containing an area of 0.971 acres.

END OF EXHIBIT "C"

EXHIBIT "D"

EASEMENT F

LOWALU MAKAI-HIKINA SUBDIVISION

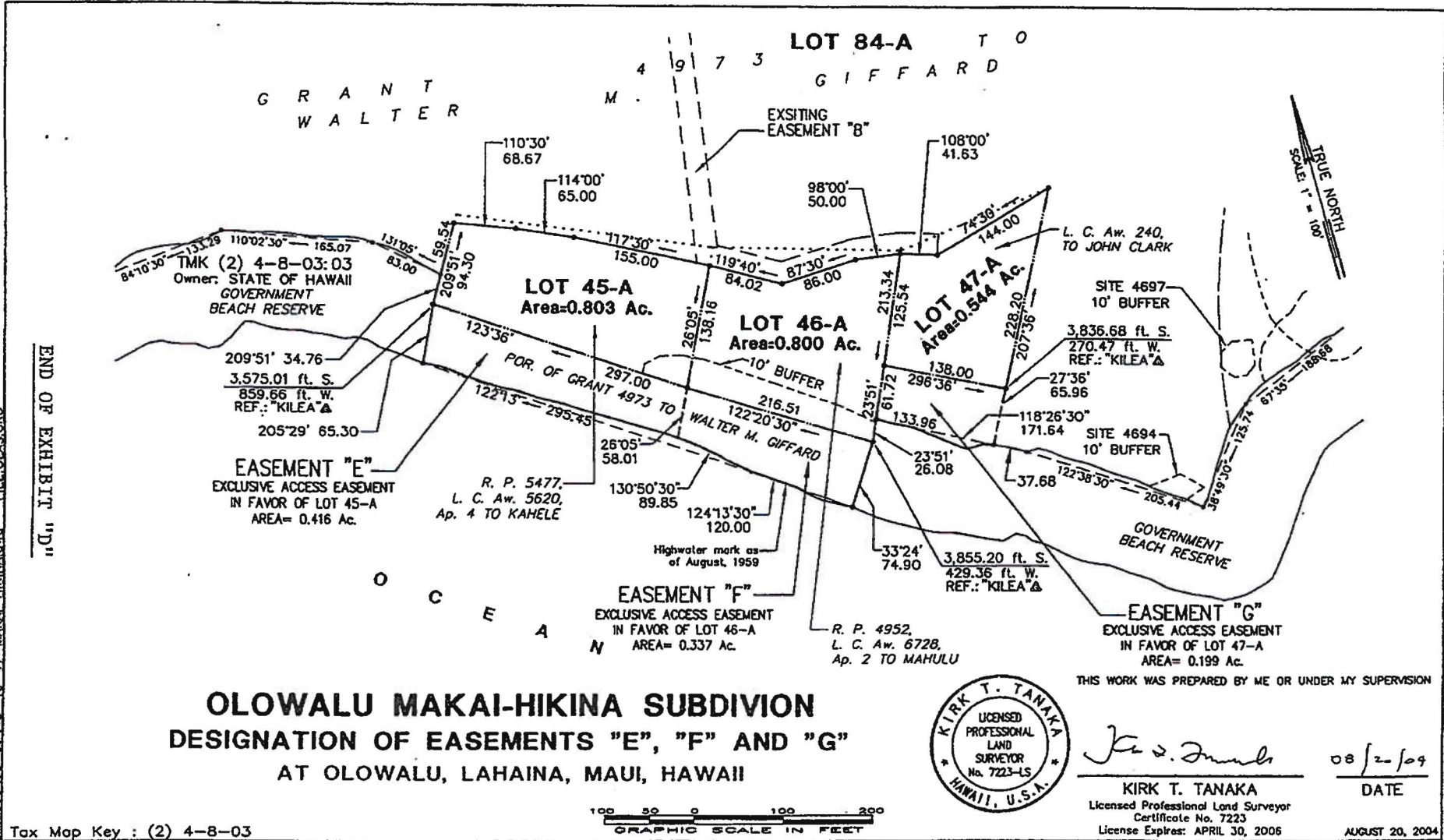
SITUATED AT LOWALU, LAHAINA, MAUI, HAWAII

BEING A PORTION OF GRANT 4793 TO WALTER M. GIFFARD

An exclusive easement for access purposes affecting Lot 84-A, Olowalu Makai-Hikina Subdivision, in favor of Lot 46-A, Olowalu Makai-Hikina Subdivision, and described as follows:

Beginning at the Northeast corner of this Easement, being also the Southeast corner of Lot 46-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KILEA" being 3,855.20 feet South and 429.36 feet West and running by azimuths measured clockwise from true South:

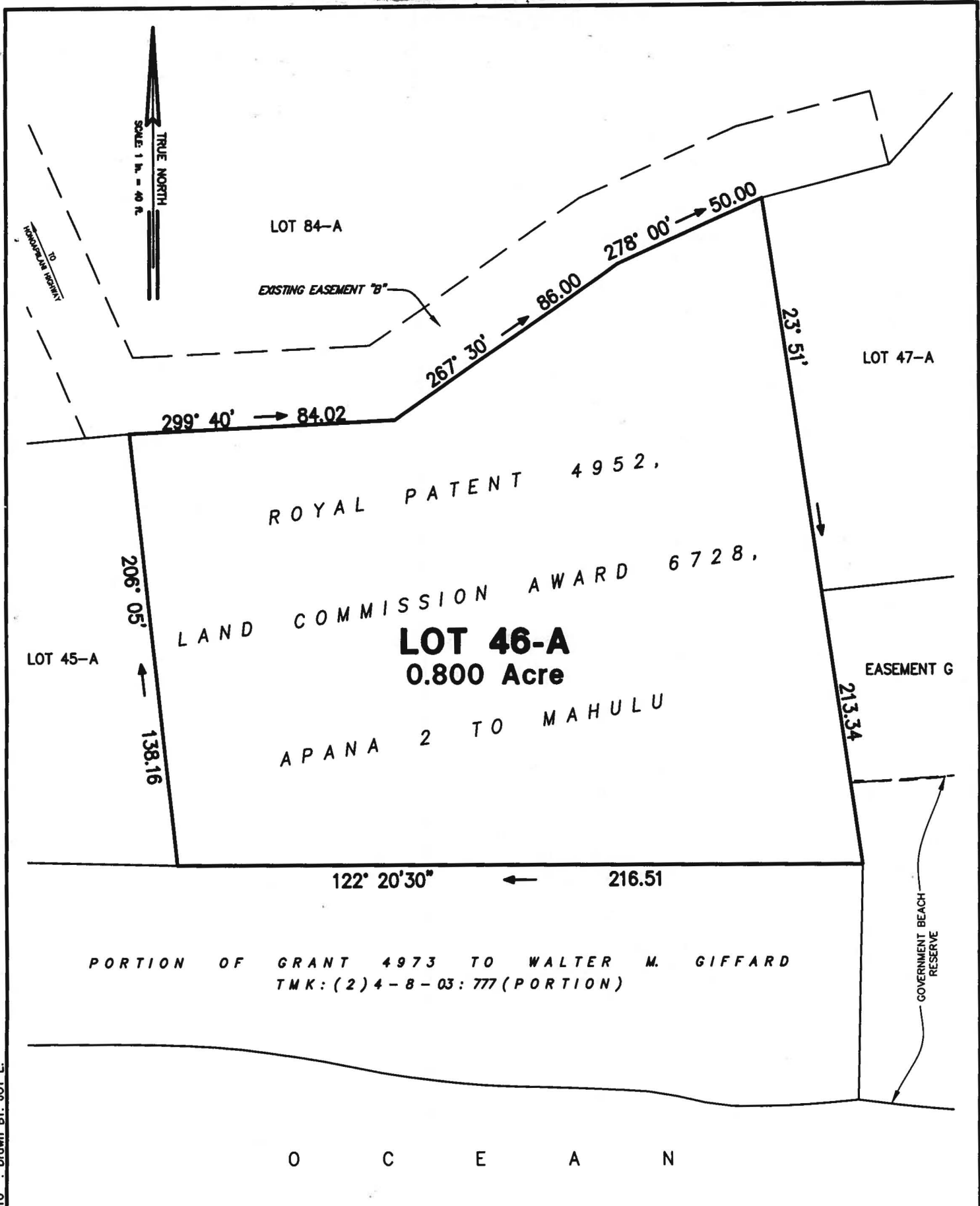
1. 33° 24' 74.90 feet along the Government Beach Reserve;
2. 124° 13' 30" 120.00 feet along the seashore at highwater mark as of August 1959;
3. 130° 50' 30" 89.85 feet along the seashore at highwater mark as of August 1959;
4. 206° 05' 58.01 feet along the remainder of Lot 84-A;
5. 302° 20' 30" 216.51 feet along Lot 46-A, to the point of beginning and containing an area of 0.337 acre, more or less.



Tax Map Key : (2) 4-8-03
871 KOLU STREET, SUITE 201
WAILUKU, MAUI, HAWAII 96793

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

AUGUST 20, 2004
JOB NO. 98-59



TAX MAP KEY: (2) 4-8-003: 046

AREA: 0.800 Acres

COMMUNITY PLAN MAP No. _____
COMMUNITY PLAN AMENDMENT - LAHAINA, MAUI
FROM: OPEN SPACE
TO: AGRICULTURAL

APPROVED:

 County Clerk

APPROVED:

 Planning Director

PUBLIC HEARING:
 ADOPTED COUNCIL:
 ADOPTED MAYOR:
 ORDINANCE No.

DATE: 08-24-10

SCALE: 1" = 40'

OFFICE OF THE COUNTY CLERK
 200 So. HIGH ST., WAILUKU, MAUI, HAWAII - 96793

L - _____

(Layout2)
 Z:\1998\98-59\LOWALLU\ELUA_46A\OLO_ELUA_46A_TOPO.dwg : 26-AUG-2010 : Drawn BY: JOY E.

SPECIAL MANAGEMENT AREA ASSESSMENT

PROJECT INFORMATION

Project Name: **Proposed Peter Martin Single-Family Residence**
Address: **Lot 46-A Olowalu . Lahaina, Hawaii**
Date of Assessment: **July 24, 2012**
TMK Number: **4-8-003:046**
SMX Number: **2012/0240**
Building Permit:
Owner Name: **Peter Martin**
Consultant Name: **Mike Munekiyo**
Proposed Action: **Construction of a single story, 3,495 sq foot single-family dwelling (SFD)**
Zoning information per Zoning and Flood Confirmation form: **State Land Use District: Conservation and Agricultural**
County zoning: A-2 Apartment
CP designation: Open Space
Special Districts: Special Management Area (SMA)

SMA ASSESSMENT

NOTE: This assessment supersedes the Department's April 9, 2009 letter (SMX 2008/0330) which stated that the Department could not process an SMA Assessment for this project due to inconsistency with the West Maui Community Plan designation of Park.

Pursuant to Section 12-202-12 Assessment and determination procedures, Section 12-202-12(d) the assessment application shall be reviewed as follows:

(1) Upon submission of a completed application, the director shall review the proposed action and make a written evaluation as to:

(A) The valuation of the proposed action. The applicant's estimates of the total cost or fair market value may be verified by the director of public works and waste management. In the event of a conflict between the estimates of the applicant and the director of public works and waste management, the higher estimate amount shall be used by the director for the purposes of an assessment of the proposed action;

Valuation of the project: \$1,500,000.00
Comments: The project valuation is \$1,500,000 as stated in the application provided on August 27, 2010.

(B) Whether the proposed action is or is not a development; and

The proposed project is for the construction of a single family home and related site improvements. The Director finds the proposed project to be deemed "not a development" pursuant to Chapter 205A-22.

- (C) The potential adverse environmental and ecological effects based upon the significance criteria set forth in subsection (e).

The proposed work will not have an adverse environmental and ecological effect.

Subsection "e" states that in considering the significance of potential environmental and ecological effects, the director shall evaluate:

- A) Involves an irrevocable commitment to loss or destruction of any natural or cultural resource.**

It is anticipated that the project will not involve a significant loss or destruction of natural or cultural resources. An archeological inventory survey was done of the Olowalu lands, including the subject parcel, by Xamanek in 2000. The survey did not identify any significant archeological resources on the subject property. The AIS report was approved by the Department of Land and Natural Resources State Historic Preservation Division (SHPD) on February 25, 2000. The applicant has represented that should historic or cultural resources be discovered during the ground altering activities, work will immediately cease and SHPD be notified. As for natural resources, the West Maui Community Plan (WMCP) designation of the entire parcel is in OS (Open Space). However, the Board of Land & Natural Resources, granted a FONSI (Finding of No Significant Impact) on an Environmental Assessment (EA) done for the property (for a CDUP – being on Conservation land, this was triggered). The Director finds that since the SF project was reviewed and granted a FONSI, there is no environmental impact and it is therefore deemed exempt from SMA.

- B) Significantly curtails the range of beneficial uses of the environment.**

Shoreline (lateral) access in the area should (is required) be available through the government beach access located south of the subject property when the beach path being constructed in coordination with DLNR is completed. According to the applicant, this path has been completed (on the government beach reserve parcel).

- C) Conflicts with the county's or the state's long-term environmental policies or goals.**

Hawaii State Plan: State environmental goals can be found in Chapter 226 Hawaii State Planning Act as follows:

§226-4 State goals include the following environmental goal:

(2) A desired physical environment, characterized by beauty, cleanliness, quiet, stable natural systems, and uniqueness, that enhances the mental and physical well-being of the people.

§226-11 Objectives and policies for the physical environment--land-based, shoreline, and marine resources.

- (a) Planning for the State's physical environment with regard to land-based, shoreline, and marine resources shall be directed towards achievement of the following objectives:
 - (1) Prudent use of Hawaii's land-based, shoreline, and marine resources.
 - (2) Effective protection of Hawaii's unique and fragile environmental resources.
- (b) To achieve the land-based, shoreline, and marine resources objectives, it shall be the policy of this State to:
 - (1) Exercise an overall conservation ethic in the use of Hawaii's natural resources.
 - (2) Ensure compatibility between land-based and water-based activities and natural resources and ecological systems.
 - (3) Take into account the physical attributes of areas when planning and designing activities and facilities.
 - (4) Manage natural resources and environs to encourage their beneficial and multiple use without generating costly or irreparable environmental damage.
 - (8) Pursue compatible relationships among activities, facilities, and natural resources.
 - (9) Promote increased accessibility and prudent use of inland and shoreline areas for public recreational, educational, and scientific purposes.

§226-12 Objective and policies for the physical environment--scenic, natural beauty, and historic resources.

- (a) Planning for the State's physical environment shall be directed towards achievement of the objective of *enhancement* (emphasis added) of Hawaii's scenic assets, natural beauty, and multi-cultural/historical resources.
- (b) To achieve the scenic, natural beauty, and historic resources objective, it shall be the policy of this State to:

- (1) Promote the preservation (emphasis added) and restoration of significant natural and historic resources.
- (3) Promote the preservation of views and vistas to enhance the visual and aesthetic enjoyment of mountains, ocean, scenic landscapes, and other natural features.

§226-13 Objectives and policies for the physical environment--land, air, and water quality.

- (a) Planning for the State's physical environment with regard to land, air, and water quality shall be directed towards achievement of the following objectives:
 - (2) Greater public awareness and appreciation of Hawaii's environmental resources.
- (b) To achieve the land, air, and water quality objectives, it shall be the policy of this State to:
 - (5) Reduce the threat to life and property from erosion, flooding, tsunamis, hurricanes, earthquakes, volcanic eruptions, and other natural or man-induced hazards and disasters.
 - (6) Encourage design and construction practices that enhance the physical qualities of Hawaii's communities.
 - (7) Encourage urban developments in close proximity to existing services and facilities.

The Director finds that the proposed project does not conflict with Chapter 226 Hawaii State Planning Act environmental goals as stated above. The proposal is to build a 3,495 (MDA) sq. ft slab-on-grade SFD. However, the Board of Land & Natural Resources (State of Hawaii, DLNR) granted a FONSI (Finding of No Significant Impact) on an Environmental Assessment (EA) done for the property (for a CDUP, and which would have been used for a Community Plan Amendment that was deemed necessary by previous Planning Director Jeffrey Hunt in order to have "consistency" on the property). The Director finds that since the SF residence project was reviewed and granted a FONSI, it is determined that the project does not conflict with HRS Chapter 226.

HRS Chapter 343 Environmental Impacts

The project is located in the State Conservation District, Subzone "Limited". Permitted uses in this Subzone include SFD if approved by the BLNR, and require compliance (in part) with HRS Chapter 343 (Environmental Assessment). The applicant applied for and was granted a CDUP by DLNR on August 21, 2011. Furthermore, the Board of Land & Natural Resources granted a FONSI (Finding of No Significant Impact) on an Environmental Assessment (EA) done for the property. The

Director finds that since the project was reviewed and granted a FONSI, the project has been sufficiently reviewed under HRS Chapter 343.

HRS Chapter 205-A Coastal zone management program

The proposed project is consistent with Chapter 205A-2 Coastal zone management program objectives and policies as outlined in Criteria (L) below.

Maui County General Plan 2030 Countywide Policy Plan

The County's long-term environmental policies can be found in the recently adopted Maui County General Plan 2030 Countywide Policy Plan. The plan is the first component of the decennial General Plan update. The Countywide Policy Plan replaces the General Plan as adopted in 1990 and amended in 2002. The Countywide Policy Plan acts as an over-arching values statement and umbrella policy document for the Maui Island Plan and the nine Community Plans that provides broad goals, objectives, policies, and implementing actions that portray the desired direction of the County's future.

Specifically, the plan includes:

1. A vision statement and core values for the County to the year 2030
2. An explanation of the plan-making process
3. A description and background information regarding Maui County today
4. Identification of guiding principles
5. A list of countywide goals, objectives, policies, and implementing actions related to the following core themes:
 - A. Protect the Natural Environment
 - B. Preserve Local Cultures and Traditions
 - C. Improve Education
 - D. Strengthen Social and Healthcare Services
 - E. Expand Housing Opportunities for Residents
 - F. Strengthen the Local Economy
 - G. Improve Parks and Public Facilities
 - H. Diversify Transportation Options
 - I. Improve Physical Infrastructure
 - J. Promote Sustainable Land Use and Growth Management
 - K. Strive for Good Governance

Environmental policies are found in Core Theme A: Protect the Natural Environment which states that:

“One of Maui County’s greatest assets is its natural beauty. From the upland forests to the coral reefs, the islands of Maui County are a portrait of a rare and amazing natural world. Protection of the natural environment—including the ecological systems therein—is of vital importance.

Countywide goals, objectives, policies, and actions

A. PROTECT THE NATURAL ENVIRONMENT

Goal: Maui County’s natural environment and distinctive open spaces will be preserved, managed, and cared for in perpetuity.

Objective: 1. Improve the opportunity to experience the natural beauty and native biodiversity of the islands for present and future generations.

Policies:

- Restore and protect forests, wetlands, watersheds, and stream flows, and guard against wildfires, flooding, and erosion.
- Protect undeveloped beaches, dunes, and coastal ecosystems, and restore natural shoreline processes.
- Protect the natural state and integrity of unique terrain, valued natural environments, and geological features.
- Preserve and provide ongoing care for important scenic vistas, view planes, landscapes, and open-space resources.

Objective: 2. Improve the quality of environmentally sensitive, locally valued natural resources and native ecology of each island.

Policies:

- Protect and restore nearshore reef environments and water quality.
- Improve the connection between urban environments and the natural landscape, and incorporate natural features of the land into urban design.
- Utilize land-conservation tools to ensure the permanence of valued open spaces.
- Strengthen coastal-zone management, re-naturalization of shorelines, where possible, and filtration or treatment of urban and agricultural runoff.

Objective: 3. Improve the stewardship of the natural environment.

Policies:

- Preserve and protect natural resources with significant scenic, economic, cultural, environmental, or recreational value.
- Evaluate development to assess potential short-term and long-term impacts on land, air, aquatic, and marine environments.
- Improve efforts to mitigate and plan for the impact of natural disasters, human-influenced emergencies, and global warming.
- Provide public access to beaches and shorelines for recreational and cultural purposes where appropriate.
- Educate the construction and landscape industries and property owners about the use of best management practices to prevent erosion and nonpoint source pollution.
- Support the acquisition of resources with scenic, environmental, and recreational value, and encumber their use.
- For each shoreline community, identify and prioritize beach-conservation objectives, and develop action plans for their implementation.

Objective: 4. Educate residents and visitors about responsible stewardship practices and the interconnectedness of the natural environment and people.

Policies:

- Align priorities to recognize that the health of the natural environment and the health of people are inextricably linked.

B. PRESERVE LOCAL CULTURES AND TRADITIONS

Goal: Maui County will foster a spirit of pono and protect, perpetuate, and reinvigorate its residents' multi-cultural values and traditions to ensure that current and future generations will enjoy the benefits of their rich island heritage.

Objective: 2. Emphasize respect for our island lifestyle and our unique local cultures, family, and natural environment.

Policies:

- Recognize the interconnectedness between the natural environment and the cultural heritage of the islands.

G. IMPROVE PARKS AND PUBLIC FACILITIES

Goal: A full range of island-appropriate public facilities and recreational opportunities will be provided to improve the quality of life for residents and visitors.

Objective: 1. Expand access to recreational opportunities and community facilities to meet the present and future needs of residents of all ages and physical abilities.

Policies:

- Protect, enhance, and expand access to public shoreline and mountain resources.
- Expand and enhance the network of parks, multi-use paths, and bikeways.

Objective: 2. Improve the quality and adequacy of community facilities.

Policies:

- **Maintain, enhance, expand, and provide new active and passive recreational facilities in ways that preserve the natural beauty of their locations.**

J. PROMOTE SUSTAINABLE LAND USE AND GROWTH MANAGEMENT

Goal: Community character, lifestyles, economies, and natural assets will be preserved by managing growth and using land in a sustainable manner.

Objective: 1. Improve land use management and implement a directed-growth strategy.

Policies:

- Encourage redevelopment and infill in existing communities on lands intended for urban use to protect farm land and open-space resources.
- Discourage new entitlements for residential, resort, or commercial development along the shoreline.
- Restrict development in areas that are prone to natural hazards, disasters, or sea-level rise.
- Direct new development in and around communities with existing infrastructure and service capacity, and protect natural, scenic, shoreline, and cultural resources.
- Establish and maintain permanent open space between communities to protect each community's identity.
- Support the dedication of land for public uses.

- Preserve the public's rights of access to and continuous lateral access along all shorelines.

Objective: 2. Improve and increase efficiency in land use planning and management.

Policies:

- Assess the cumulative impact of developments on natural ecosystems, natural resources, wildlife habitat, and surrounding areas.
- Ensure that new development projects requiring discretionary permits demonstrate a community need, show consistency with the General Plan, and provide an analysis of impacts.
- Coordinate with Federal, State, and County officials in order to ensure that land use decisions are consistent with County plans and the vision local populations have for their communities.

Objective: 3. Improve the efficiency, reliability, and transparency of County government's internal process and decision making.

Policies:

- Ensure that laws, policies, and regulations are internally consistent and effectuate the intent of the General Plan.

Objective: 4. Adequately fund in order to effectively administer, implement, and enforce the General Plan.

Policies:

- Ensure that the County's General Plan process provides for efficient planning at the County, island, town, and neighborhood level.
- Enable the County government to be more responsive in implementing our General Plan and Community Plans.
- Review discretionary permits for compliance with the Countywide Policy Plan.
- Strengthen the enforcement of County, State, and Federal land use laws.

The proposed project is not contrary to the various Goals, Objectives and Policies set forth in the Countywide Policy Plan as stated above. The Board of Land & Natural Resources (DLNR – State of HI) granted a FONSI (Finding of No Significant Impact) on an Environmental Assessment (EA) done for the property for a CDUP as required (this document would have also been used for a Community Plan Amendment that was deemed necessary by previous Planning Director Jeffrey Hunt in order to have "consistency" on the property). The Director finds that

since the project was reviewed and granted a FONSI, the project is consistent with the Countywide Policy Plan.

WEST MAUI COMMUNITY PLAN

County environmental policies can also be found in the West Maui Community Plan. The West Maui Community Plan contains policy recommendations that express the long-term visions for the community and sets forth goals which are statements identifying preferred future conditions. The objectives and policies specify steps and measures to be taken to achieve the goals. Implementing actions identify specific program or project requirements to conduct tasks necessary for the successful implementation of the plan.

The plans states that:

“Any interpretation of the policies of this plan or any amendment proposed to this plan shall be based in large part to the specified intended effects of this plan.

These are:

1. Allocate adequate open space for public recreational activities, especially within the urbanized areas of the region and along the shoreline.
2. Slow the rate of growth and stabilize the economy.
3. Protect the natural resources of the region and promote environmentally sound uses and activities.
4. Exert more control on the timing and patterns of development within the region through the community plan, zoning, and the permitting process.
5. Encourage infill in order to protect agriculture and mauka open spaces.

Specific environmental goals are as follows:

Land Use

Goal: An attractive, well-planned community with a mixture of compatible land uses in appropriate areas to accommodate the future needs of residents and visitors in a manner that provides for the stable social and economic well-being of residents and the preservation and enhancement of the region's open space areas and natural environmental resources.

Objectives and Policies for the West Maui Region in General

2. Preserve and enhance the mountain and coastal scenic vistas and the open space areas of the region.
4. Establish an appropriate supply of urban land within the region to meet the needs of the community over the next 20 years. The Community Plan and its map shall define the urban growth limits for the region and all zoning requests and/or proposed land uses and developments shall be consistent with the West Maui Community Plan and its land use map.

5. Preserve the current State Conservation District and the current State Agriculture District boundaries in the planning region, in accordance with this Community Plan and its land use map. Lands north of Kapalua and south of Puamana to the region's district boundaries should ensure the preservation of traditional lifestyles, historic sites, agriculture, recreational activities and open space.
8. Where possible, relocate the Honoapiilani Highway south of Puamana in order to reduce potential inundation and disruption of service due to storm-generated wave action. Where the highway is relocated for the purpose stated, lands makai of the new alignment shall be designated Open Space (OS) or Park (PK) to provide for ocean-related recreational use. Notwithstanding the foregoing, continued agriculture use shall be allowed within these area.
9. Preserve the existing domestic, small farm, business, youth care, and recreational uses from Honokahua Bay to the district's north boundary and from Puamana to the district's south boundary. Support continuation of the traditional agriculture activities in Honokohau Valley by recognizing Native Hawaiian water rights protected by Article XII, Section 7, of the State Constitution, and Section 1.1, Hawaii Revised Statutes.
10. Provide and maintain parks and beach access for the present and future needs of residents and visitors. For the areas outside Lahaina town, establish or expand parks and public shoreline areas to include but not limited to the following:
 - b. The development of a public beach park at Olowalu near Camp Pecusa for camping and ocean-related recreational and educational activities. The final boundaries of this park shall be determined in consultation with the landowner. However, if agriculture in the area is decreased by 50 percent, 20 acres of park land shall be considered for addition to the 10 acres of park land currently designated in the Land Use Map.

Environment

Goal: A clean and attractive physical, natural and marine environment in which man-made developments on or alterations to the natural and marine environment are based on sound environmental and ecological practices, and important scenic and open space resources are preserved and protected for public use and enjoyment.

Objectives and Policies

1. Protect all waters and wetland resources. Such resources provide open space and habitat for plant and animal life in the aquatic environment. They are also important for flood control and natural landscape.
2. Preserve agricultural lands and open space with particular emphasis on natural coastal areas along major highways.
3. Protect the quality of nearshore and offshore waters. Monitor outfall systems, streams and drainage ways and maintain water quality standards. Continue to

investigate, and implement appropriate measures to mitigate, excessive growth and proliferation of algae in nearshore and offshore waters.

4. Emphasize land management techniques such as natural landscaping, regular maintenance of streams and drainage ways and siltation basins, avoidance of development in flood-prone areas, and other measures that maintain stream water quality. Wherever feasible, such management techniques should be used instead of structural solutions, such as building artificial stream channels or diversion of existing natural streams.
11. Prohibit the construction of vertical seawalls and revetments except as may be permitted by rules adopted by the Maui Planning Commission governing the issuance of Shoreline Management Area (SMA) emergency permits, and encourage beach nourishment by building dunes and adding sand as a sustainable alternative.
14. Protect the shoreline and beaches by preserving waterfront land as open space wherever possible. This protection shall be based on a study and analysis of the rate of shoreline retreat plus a coastal hazard buffer zone. Where new major waterfront structures or developments are to be approved, preservation should be assured for 50-100 years by employing a shoreline setback based on the rate established by the appropriate study.
15. Promote drainage and stormwater management practices that prevent flooding and protect coastal water quality.
16. Create a coastal improvement district emphasizing the equal preservation of both coastal lands and beaches through the adoption of zoning and land use controls that encourage compatible development in safe areas, provide for the long-term economic needs of beach and dune nourishment and maintenance, and enable strategic retreat from the coast wherever feasible through a program of land acquisition, economic incentives, and specific construction guidelines.

Cultural Resources

Goal: To preserve, protect and restore those cultural resources and sites that best represent and exemplify the Lahaina region's pre-contact, Hawaiian Monarchy, missionary and plantation history.

Objectives and policies

3. Encourage and protect traditional shoreline and mountain access, cultural practices and rural/agricultural lifestyles. Ensure adequate access to our public shoreline areas for public recreation, including lateral continuity.

Social Infrastructure

Goal: Develop and maintain an efficient and responsive system of public services which promotes a safe, healthy, and enjoyable lifestyle, and offers opportunities for self-improvement and community well being.

Objectives and policies

5. Provide public camping areas along the shoreline of the region, such as Olowalu near Camp Pecusa.
7. Ensure adequate public access to shoreline areas, including lateral access to establish the continuity of public shorelines.

Although the community plan designation is for Open Space, and there are policies discussing development in this area (Olowalu), the Director finds that the proposed project is not predominantly contrary to the West Maui Community Plan's Environmental goals, objectives and policies. The Board of Land & Natural resources (DLNR – State of HI) granted a FONSI (Finding of No Significant Impact) on an Environmental Assessment (EA) done for the property (for a CDUP, and the document was also to be used for a Community Plan Amendment that was deemed necessary by previous Planning Director Jeffrey Hunt in order to have "consistency" on the property). Director Spence finds that since the project was reviewed and granted a FONSI, the project does not have a cumulative impact or a significant environmental or ecological affect. As such, the proposed SFD is deemed exempt under the SMA law and, thus, a CPA is not (should not have been) required.

(D) Substantially affects the economic or social welfare and activities of the community, county, or state.

The proposed project is for a single family home that is not part of larger subdivision. The project will provide short-term construction jobs and continued payment of property taxes creating positive economic activity. The project is not anticipated to substantially affect the economic welfare of the community, county, or state.

(E) Involves substantial secondary impacts, such as population changes and increased effects on public facilities, streets, drainage, sewage, and water systems, and pedestrian walkways.

The proposed project is the construction and occupancy of a single family home by one family. Substantial secondary impacts, such as population changes and increased effects on public facilities, streets, drainage, sewage, and water systems, and pedestrian walkways are not anticipated.

There is no county water system in the area. However, water to the site will be provided by the Olowalu Water Company, LLC, an existing private water service in the area.

There is no County sewer in the Olowalu area. The applicant proposes to install an aerobic individual wastewater system, as required by the Department of Health. Police and fire protection services are not anticipated to be severely adversely affected as the project will not extend existing service area limits. The main stations for Police and Fire service, however, are located approximately 8 miles north of the project, in Lahaina so response times will be longer than compared to the urban area.

(F) In itself has no significant adverse effects but cumulatively has considerable effect upon the environment or involves a commitment for larger actions.

1. The proposed single family home is part of the Olowalu Makai-Hikina Subdivision and Reconsolidation (Lots 45, 46, 47 (applicant's lot, 46-A), and a portion of 005). There are a limited number of residential lots located north of the subject property. The proposed project taken cumulatively with other development in the area is not anticipated to have considerable effect upon the environment or involve a commitment for larger actions.
2. In addition, public roadways, water and wastewater systems are not anticipated to be affected by the project individually or when taken cumulatively with other development in the area.

(G) Substantially affects a rare, threatened, or endangered species of animal or plant, or its habitat.

A botanical survey of the Olowalu area which includes the subject property found no know habitats of rare, endangered, or threatened species of flora or fauna and the proposed project is therefore not anticipated to affect any rare, endangered, or threatened species of animal or plant, or its habitat.

(H) Is contrary to the state plan, county's general plan, appropriate community plans, zoning and subdivision ordinances.

Hawaii State Plan

The Hawaii State Plan "shall serve as a guide for the future long-range development of the State; identify the goals, objectives, policies, and priorities for

the State; provide a basis for determining priorities and allocating limited resources, such as public funds, services, human resources, land, energy, water, and other resources; improve coordination of federal, state, and county plans, policies, programs, projects, and regulatory activities; and to establish a system for plan formulation and program coordination to provide for an integration of all major state, and county activities.”

Director Spence finds that the proposed SFD does not conflict with the Hawaii State Plan.

Countywide Policy Plan, Maui County General Plan

The Maui Countywide Policy Plan, adopted in 2010, is the first component of the decennial General Plan update. The Countywide Policy Plan replaces the General Plan as adopted in 1990 and amended in 2002. The Plan acts as an over-arching values statement and umbrella policy document for the Maui Island Plan and the nine Community Plans that provides broad goals, objectives, policies, and implementing actions that portray the desired direction of the County's future.

J. Promote Sustainable Land Use and Growth Management

Goal: Community character, lifestyles, economies, and natural assets will be preserved by managing growth and using land in a sustainable manner.

Objective: 2. Improve and increase efficiency in land use planning and management.

Policies:

- Assess the cumulative impact of developments on natural ecosystems, natural resources, wildlife habitat, and surrounding areas.
- Ensure that new development projects requiring discretionary permits demonstrate a community need, show consistency with the General Plan, and provide an analysis of impacts.
- Coordinate with Federal, State, and County officials in order to ensure that land use decisions are consistent with County plans and the vision local populations have for their communities.

Objective: 3. Improve the efficiency, reliability, and transparency of County government's internal process and decision making.

Policies:

- Ensure that laws, policies, and regulations are internally consistent and effectuate the intent of the General Plan.

Objective: 4. Adequately fund in order to effectively administer, implement, and enforce the General Plan.

Policies:

- Ensure that the County's General Plan process provides for efficient planning at the County, island, town, and neighborhood level.
- Enable the County government to be more responsive in implementing our General Plan and Community Plans.
- Review discretionary permits for compliance with the Countywide Policy Plan.
- Strengthen the enforcement of County, State, and Federal land use laws.

Director Spence finds that the project does not conflict with the above provisions of the Countywide Policy Plan.

West Maui Community Plan

The West Maui Community Plan (WMCP) contains policy recommendations that express the long-term visions for the community and sets forth goals which are statements identifying preferred future conditions. The objectives and policies specify steps and measures to be taken to achieve the goals. Implementing actions identify specific program or project requirements to conduct tasks necessary for the successful implementation of the plan. A detailed analysis of the plan's environmental goals can be found in Section C above.

The first and second listed "Problems" identified in this plan, for this region, pertain to the loss of open space and land use controls. Specifically (in part),

"THREATS TO THE ENVIRONMENT AND THE POTENTIAL LOSS OF OPEN SPACE

The natural environment is an important aspect of the region's economy, lifestyle and recreational needs. Therefore, potential threats to the environment are seen as major problems..."

LAND USE CONTROLS AND COMMUNITY PLAN IMPLEMENTATION.

The integrity of the Community Plan and the existing system of land use controls must be preserved and enhanced in order to ensure sensible levels of development and growth in the region. The implementation of the Community Plan has been lacking and community input should be actively solicited prior to each proposed amendment to the Community Plan. Projects have been permitted that were inconsistent with the Community Plan and agriculturally designated lands are being used for other than agricultural purposes. Other specific problem areas include the inconsistency of zoning and that development has preceded infrastructural improvements."

The first listed "Opportunities" identified in this plan, for this region, pertains to the Natural Environment. Specifically (in part),

"NATURAL ENVIRONMENT - The natural environment is a major asset of the region – open spaces and stretches of shoreline between the south boundary of the district and Puamana and from Kapalua to Nakalele Point, the expansive landscape of agricultural and natural open space areas against the backdrop of the West Maui Mountains.... The natural environment of the Lahaina region characterizes much of what is special about West Maui as a place to live and to visit.

The marine and nearshore environment and open space areas are important assets of the region that should be protected and preserved for the long term..."

Director Spence finds that the proposed project is not contrary to the above language in the WMCP and nor contrary to the community plan designation ("Open Space") for the subject parcel (map). This finding is based on the fact that the Board of Land & Natural Resources (DLNR – State of HI) granted a FONSI (Finding of No Significant Impact) on an Environmental Assessment (EA) done for the property (for a CDUP, and the document was proposed to be used for a Community Plan Amendment that was deemed necessary by previous Planning Director Jeffrey Hunt in order to have "consistency" on the property). The Director finds that since the project was reviewed and granted a FONSI, the project does not have a cumulative impact or a significant environmental or ecological effect on the SMA, nor is it contrary to the West Maui Community Plan.

The definitions provided in the County's Community Plans are purposely broad. As a result, in order to determine consistency in land use, Zoning (MCC Chapter 19) definitions and permitted uses are used and applied to the community plan designation. This is evidenced by not only historical practices (i.e. County of Maui vs. Douglas R. White, Gatri vs. Blane), but also by codes in other MCC chapters that relate to land use - such as Chapter 18.04.030 (Subdivision Ordinance). This code requires a subdivision to be consistent with the county general plan, community plans, and State land use classifications, and zoning. The definition (MCC Chapter 18.04.109) of consistent is,

"Consistent" means the land uses that are proposed within the subdivision are permitted by the county general plan, community plan, State land use classification, and zoning for that portion of the site where land use is being proposed."

During Council deliberations of this code which was amended in 2010 (**Exhibits 3 & 4; Committee Report (3) and July 1, 2010 COW minutes (4)**), both the Planning Director and Public Works Director at the time explained to the council members that uses proposed in areas where zoning and community plan designations were consistent would be allowed to be subdivided. An example given was a parcel of land

which contained Single Family zoning (R-1) and Community Plan designation Public/Quasi Public (State Land Use Urban). Given that County zoning allows for the construction of a school (public/quasi public use) in the Residential district, the proposed use on this property would be considered consistent. There would be no requirement to change the zoning to Public/Quasi Public. The second example used was a case of a parcel, in the SMA, having Hotel zoning and a mixture of both Hotel and OS community plan designations. The council was advised that so long as the landowner proposed no structures in the area designated CP OS - because zoning does not allow structures in OS - the project would be deemed consistent. The council was assured that the need for a CPA would only be warranted/triggered if the applicant proposed to do a use in the CP designated area that was not permitted (as defined by zoning).

However, in the above examples, the actions described (building a school or a hotel) would all be deemed a "development" (HRS 205A-22) within the SMA (i.e. there are no exemptions for the construction of a school or hotel within the SMA). This particular assessment for a SFD is considered exempt under SMA law. Therefore, consistency is not necessary. In addition, the Board of Land & Natural Resources (DLNR - State of HI) granted a FONSI (Finding of No Significant Impact) on an Environmental Assessment (EA) done for the property (for a CDUP and the document would have also been used for a Community Plan Amendment that was deemed necessary by previous Planning Director Jeffrey Hunt in order to have "consistency" on the property). The Director finds that since the project was reviewed and granted a FONSI, it is determined that this excluded use would not have a cumulative impact nor a substantial adverse environmental or ecological effect on the SMA.

Zoning

The proposed project is not contrary to Maui county's zoning ordinance of A-2. The county zoning for the property is Apartment District, A-2. Single family homes are a permitted use per Maui County code as follows:

19.12.010 - Generally.

- A. Multiple-family apartment districts are generally established outside of the high density core of the central portion of a town. It is applicable to areas where multiple-family units are indicated; yet, the areas have not reached a transitional stage wherein public, semi-public, institutional and other uses are desirable.
- B. Apartment districts shall consist of two types: A-1 apartment district and A-2 apartment district.
- C. Buildings and structures within the apartment district shall be occupied on a long term residential basis.

19.12.020 - Permitted uses.

Within the A-1 and A-2 districts, the following uses shall be permitted:

- A. Any use permitted in the residential and duplex districts;

(I) Detrimently affects air or water quality or ambient noise levels.

The proposed project is not anticipated to detrimentally affect air quality or ambient noise levels. There may be a temporary impact on air quality in the immediate vicinity due to construction. Dust control measures including fencing and regular watering will be used. There may also be temporary noise impacts associated with construction.

(J) Affects an environmentally sensitive area, such as flood plain, shoreline, tsunami zone, erosion-prone area, geologically hazardous land, estuary, fresh waters, or coastal areas.

The Flood Insurance Rate Map (FIRM) identifies the subject project to be located within the "X" and "AE" Flood Zones. The applicant states the owner will comply with all permitting requirements of the Flood Hazard Areas code (MCC 19.62).

The applicant property is not a shoreline property; there is a private lot fronting his. The applicant states that the SFD is located approximately 100 feet from the shoreline. As such, this should minimize concerns related to impacts from shoreline erosion.

(K) Substantially alters natural land forms and existing public views to and along the shoreline.

From the mauka looking makai perspective, the subject property is somewhat visible from Honopi'ilani Highway which runs in an east-west alignment mauka of the subject property. Thick vegetation that has been planted by the subdivision owner, located between the parcel and the highway, has increasingly hindered views from the highway to the ocean. It should be noted that historically, during the days of sugar cane production on the property, views of the ocean could clearly be seen from Honopi'ilani Highway when the cane was burned and harvested. Then, as the cane was planted and grew, the views diminished.

The parcel is relatively flat and does not require cutting into natural land forms. It will require fill. Although the proposed project is not anticipated to substantially alter natural land forms, it will slightly affect existing public views to and along the shoreline.

(L) Is contrary to the objectives and policies of chapter 205A, HRS.

The proposed project is not contrary to the objectives and policies of Chapter 205A, HRS.

Chapter 205A-2 Coastal zone management program; objectives and policies are as follows:

(1) Recreational Resources

Objective: Provide coastal recreational opportunities accessible to the public.

Policies:

- (A) Improve coordination and funding of coastal recreational planning and management; and**
- (B) Provide adequate, accessible, and diverse recreational opportunities in the coastal zone management area by:**
 - (i) Protecting coastal resources uniquely suited for recreational activities that cannot be provided in other areas;**
 - (ii) Requiring replacement of coastal resources having significant recreational value, including but not limited to surfing sites, fishponds, and sand beaches, when such resources will be unavoidably damaged by development; or requiring reasonable monetary compensation to the state for recreation when replacement is not feasible or desirable;**
 - (iii) Providing and managing adequate public access, consistent with conservation of natural resources, to and along shorelines with recreational value;**
 - (iv) Providing an adequate supply of shoreline parks and other recreational facilities suitable for public recreation;**
 - (v) Ensuring public recreational use of county, state, and federally owned or controlled shoreline lands and waters having recreational value consistent with public safety standards and conservation of natural resources;**
 - (vi) Adopting water quality standards and regulating point and non-point sources of pollution to protect, and where feasible, restore the recreational value of coastal waters;**
 - (vii) Developing new shoreline recreational opportunities, where appropriate, such as artificial lagoons, artificial beaches, and artificial reefs for surfing and fishing; and**
 - (viii) Encouraging reasonable dedication of shoreline areas with recreational value for public use as part of discretionary approvals or permits by the land use commission, board of land and natural resources, county planning commissions; and crediting such dedication against the requirements of Section 46-6, HRS.**

Public beach access in the area is located to the south of the subject property at Camp Pecusa and continues through a government beach reserve (fronting the subject property) and a required beach pedestrian pathway on

the private strip of land located between the subject parcel to the north and the shoreline. Public beach access is also located north of the property at Olowalu Wharf on a lot owned by the State. The owners of the subdivision (which the applicant is part owner) in conjunction with the DLNR are clearing brush and creating a beach path adjacent to the shoreline on the government beach reserve, south of the applicant's property, increasing public access to the shoreline. This was required as part of the SMA subdivision approval in 2001.

(2) Historic resources

Objective: Protect, preserve and, where desirable, restore those natural and manmade historic and prehistoric resources in the coastal zone management area that are significant in Hawaiian and American history and culture.

Policies:

- (A) Identify and analyze significant archaeological resources;
- (B) Maximize information retention through preservation of remains and artifacts or salvage operations; and
- (C) Support state goals for protection, restoration, interpretation, and display of historic resources.

Archaeological inventory survey reports for the Olowalu area which included the subject property were approved by SHPD on February 25, 2000 and April 12, 2000. No significant surface or subsurface resources were identified within the subject property. The Archeological Mitigation and Preservation Plan was approved by SHPD on June 4, 2001. In accordance with Section 6E-43.6, Hawai'i Revised Statutes and Chapter 13-300, Hawai'i Administrative Rules, if any significant cultural deposits or human skeletal remains are encountered, work will stop in the immediate vicinity and the State Historic Preservation Division of the Department of Land and Natural Resources (SHPD/DLNR) and the Office of Hawaiian Affairs (01-IA) will be contacted.

(3) Scenic and open space resources

Objective: Protect, preserve, and, where desirable, restore or improve the quality of coastal scenic and open space resources.

Policies:

- (A) Identify valued scenic resources in the coastal zone management area;

- (B) Ensure that new developments are compatible with their visual environment by designing and locating such developments to minimize the alteration of natural landforms and existing public views to and along the shoreline;
- (C) Preserve, maintain, and, where desirable, improve and restore shoreline open space and scenic resources; and
- (D) Encourage those developments which are not coastal dependent to locate in inland areas.

The Director finds that the subject project involving construction of a single-story, single-family residence and related improvements is not expected to adversely impact scenic or open space resources or alter the existing topographic character of the surrounding area. The parcel is relatively flat requiring little excavation of land and alteration of natural landforms. The building is not anticipated to have significant potential impacts to existing public views to and along the shoreline.

(4) Coastal ecosystems

Objective: Protect valuable coastal ecosystems, including reefs, from disruption and minimize adverse impacts on all coastal ecosystems.

Policies:

- (A) Improve the technical basis for natural resource management;
- (B) Preserve valuable coastal ecosystems, including reefs, of significant biological or economic importance;
- (C) Minimize disruption or degradation of coastal water ecosystems by effective regulation of stream diversions, channelization, and similar land and water uses, recognizing competing water needs; and
- (D) Promote water quantity and quality planning and management practices which reflect the tolerance of fresh water and marine ecosystems and prohibit land and water uses which violate state water quality standards.

The proposed project will not have an affect on coastal ecosystems as the proposed drainage system will handle all post-development drainage that is created from the project.

(5) Economic uses

Objective: Provide public or private facilities and improvements important to the State's economy in suitable locations.

Policies:

- (A) Concentrate coastal dependent development in appropriate areas;
- (B) Ensure that coastal dependent development such as harbors and ports, and coastal related development such as visitor facilities and energy generating facilities, are located, designed, and constructed to minimize adverse social, visual, and environmental impacts in the coastal zone management area; and
- (C) Direct the location and expansion of coastal dependent developments to areas presently designated and used for such developments and permit reasonable long-term growth at such areas, and permit coastal dependent development outside of presently designated areas when:
 - (i) Use of presently designated locations is not feasible;
 - (ii) Adverse environmental effects are minimized; and
 - (iii) The development is important to the State's economy.

The subject project could provide short term beneficial impacts to the local economy through the provision of construction employment and the generation of real property tax revenues.

(6) Coastal hazards

Objective: Reduce hazard to life and property from tsunami, storm waves, stream flooding, erosion, subsidence, and pollution.

Policies:

- (A) Develop and communicate adequate information about storm wave, tsunami, flood, erosion, subsidence, and point and nonpoint source pollution hazards;
- (B) Control development in areas subject to storm wave, tsunami, flood, erosion, hurricane, wind, subsidence, and point and nonpoint pollution hazards;
- (C) Ensure that developments comply with requirements of the Federal Flood Insurance Program;
- (D) Prevent coastal flooding from inland projects; and
- (F) Develop a coastal point and nonpoint source pollution control program.

The proposed project will be developed in compliance with requirements of the Federal Flood Insurance Program.

(7) Managing development

Objective: Improve the development review process, communication, and public participation in the management of coastal resources and hazards.

Policies:

- (A) Use, implement, and enforce existing law effectively to the maximum extent possible in managing present and future coastal zone development;
- (B) Facilitate timely processing of applications for development permits and resolve overlapping of conflicting permit requirements; and
- (C) Communicate the potential short and long-term impacts of proposed significant coastal developments early in their life-cycle and in terms understandable to the public to facilitate public participation in the planning and review process.

All aspects of the subject project will be conducted in accordance with applicable State and County requirements. Opportunity for review was provided when the Environmental Assessment was reviewed by the Board of Land & Natural Resources (BLNR). The Department's Administration (2009) had initially required the applicant to go through a CPA (and elective CIZ) process in order to obtain consistency in the General Plan, prior to the SMA being reviewed. The BLNR granted a FONSI (Finding of No Significant Impact) on an Environmental Assessment done for the property (for a CDUP, and the document would have also been used for a Community Plan Amendment that was deemed necessary by previous Planning Director Jeffrey Hunt). Since the Board granted a FONSI, it is determined that there are no significant environmental impacts to the property. The Department's Administration (2012) has now revised its policy on consistency within the SMA and has determined that since the construction of this particular SFD is exempt under SMA law (and is therefore not a development), consistency is not required and thus a CPA is no longer required.

(8) Public participation

Objective: Stimulate public awareness, education, and participation in coastal management.

Policies:

- (A) Maintain a public advisory body to identify coastal management problems and to provide policy advice and assistance to the coastal zone management program;
- (B) Disseminate information on coastal management issues by means of educational materials, published reports, staff contact, and public workshops for persons and organizations concerned with coastal-related issues, developments, and government activities; and
- (C) Organize workshops, policy dialogues, and site-specific mediations to respond to coastal issues and conflicts.

Opportunities for public awareness, education, and participation in the initial DEA process. The BLNR granted a FONSI (Finding of No Significant Impact) on the EA.

(9) Beach protection

Objective: Protect beaches for public use and recreation.

Policies:

- (A) Locate new structures inland from the shoreline setback to conserve open space and to minimize loss of improvements due to erosion;
- (B) Prohibit construction of private erosion-protection structures seaward of the shoreline, except when they result in improved aesthetic and engineering solutions to erosion at the sites and do not interfere with existing recreational and waterline activities; and
- (C) Minimize the construction of public erosion-protection structures seaward of the shoreline.

The SFD is located approximately 100 feet from the shoreline and is separated from the ocean by a private strip of land. The annual erosion rate for the area is estimated to be 0.0 feet and 0.4 feet per year. As such, the project is not anticipated to affect beach processes.

(10) Marine Resources

Objective: Implement the States ocean resources management plan.

Policies:

- (A) Exercise an overall conservation ethic, and practice stewardship in the protection, use, and development of marine and coastal resources;
- (B) Assure that the use and development of marine and coastal resources are ecologically and environmentally sound and economically beneficial;
- (C) Coordinate the management of marine and coastal resources and activities management to improve effectiveness and efficiency;
- (D) Assert and articulate the interests of the State as a partner with federal agencies in the sound management of ocean resources within the United States exclusive economic zone;
- (E) Promote research, study, and understanding of ocean processes, marine life, and other ocean resources in order to acquire and inventory information necessary to understand how ocean development activities relate to and impact upon ocean and coastal resources; and

(F) Encourage research and development of new, innovative technologies for exploring, using, or protecting marine and coastal resources.

The applicant states that increases in surface drainage flows across the subject property will be mitigated by the proposed drainage system improvements for the project. As such, no impacts to marine resources are anticipated.

CONCLUSION

In summary, HRS Chapter 205A-22 states that "Development" does not include "(1) Construction of a single-family residence that is not part of a larger development." The Director finds that the proposed \$1,500,000 SFD is a not development as defined under HRS 205A-22 and, in addition, does not have adverse environmental and ecological effects based upon the significant criteria described the Maui Planning Commission's Special Management Area Rules, Chapter 12-202-12 **The project is therefore considered exempt from the requirements of this chapter.**

Furthermore, since the project is deemed to be "not a development" (and thus not "(H) contrary to the state plan, county's general plan, appropriate community plans, zoning and subdivision ordinances" – Chapter 12-202-12), **a CPA from Open Space to Agriculture is no longer deemed required by the Department. The applicant will no longer be required to process a Community Plan amendment (nor a Change in Zoning) to Agriculture as previously directed in 2009.** CPA 2010/0004 will be closed.

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CHARMAINE TAVARES
Mayor

JEFFREY S. HUNT
Director

COLLEEN M. SUYAMA
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

June 16, 2008

Mr. James Riley
33 Lono Avenue, Suite 450
Kahului, Hawaii 96732

Dear Mr. Riley:

**SUBJECT: PRE-CONSULTATION FOR THE PROPOSED
CONSTRUCTION OF A RESIDENCE ON LOT 45-A,
LOWALU, ISLAND OF MAUI, HAWAII
TMK: (2) 4-8-003:045 (RFC 2006/0053)**

This letter is in response to your March 5, 2008 letter requesting additional information on the Department of Planning's (Department) previous consultation letter. The proposed project is to build a single-family residence along the shoreline of Olowalu. The shoreline is dynamic and its position changes in response to erosion events and storm events. Professional staff, trained in coastal processes, have conducted a number of site visits and photographed the area. The fact that in eight years you have not witnessed inundation of the area from storm surge is noted. However, the Department's recommendations are based on federal studies that have determined that the life span of a wood frame coastal residence is fifty (50) years at a minimum and seventy (70) years on average. Thus, a period of eight (8) years is insufficient to make a determination of the probable impact from coastal hazards at the site. Furthermore, findings on adjacent properties and within the littoral (beach) cell illustrate the type, nature, and dynamic fluctuations of the shoreline. **Accordingly, the Department recommends against slab-on-grade construction at the site.**

Please note that shoreline hardening to protect property may only be granted through a variance approved by the Maui Planning Commission, and the Department only recommends approval of shoreline hardening in very unique circumstances. The Department is charged through the Hawaii Coastal Zone Management Act to assess all proposed structures within the Special Management Area of the Island of Maui. One of the law's policies is to ensure structures avoid damage from coastal hazards through proper siting and location. As such, we recommend locating as far inland as feasible given the dynamic nature of the shoreline in the vicinity.

Mr. James Riley
June 16, 2008
Page 2

Thank you for your cooperation. Please contact Staff Planner Thorne Abbott should you have any questions via email at thorne.abbott@mauicounty.gov or at 270-7520.

Sincerely,



JEFFREY S. HUNT, AICP
Planning Director

xc: Colleen M. Suyama, Deputy Director
Clayton I. Yoshida, AICP, Planning Program Administrator
Aaron H. Shinmoto, PE, Planning Program Administrator (2)
Thorne E. Abbott, Coastal Resources Planner
DLNR-OCCL
DLNR-Land Division, Maui
Zoe Norcross-Nu'u, Sea Grant Extension Agent
DSA
General File

JSH:TEA:vb

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MICHAEL T. MUNEKIYO
GAYLEN ORASIO HIRAGA
MITSURU "MICK" HIRANO
KAROLYN KAWAGABA
MARK ALEXANDER REY

January 30, 2008

Alec Wong, P.E., Chief
Clean Water Branch
State of Hawai'i
Department of Health
P. O. Box 3378
Honolulu, Hawai'i 96801-3378

**SUBJECT: Proposed Martin Single-Family Residence, Olowalu, Maui, Hawai'i;
TMK (2)4-8-003:046**

Dear Mr. Wong:

We are writing to you on behalf of the applicants, Peter and Deborah Martin, to thank you for your letter (reference 11010PKP.07) dated November 5, 2007, regarding the Proposed Martin Single-Family Residence project located in Olowalu, Maui, Hawai'i.

The applicant's civil engineer will review the branch's standard comments and will incorporate applicable recommendations into the construction plans. With regards to the specific comments you provided, please see below.

1. The applicant's civil engineer will evaluate potential impacts to State waters to determine whether or not specific sections of Hawai'i Administrative Rules (HAR), Chapter 11-54 are applicable. All discharges related to project construction or operation activities will comply with relevant State Water Quality Standards. Discharges will be kept at a minimum through the application of engineering Best Management Practices (BMPs).
2. The applicant's civil engineer will coordinate with the Clean Water Branch to address applicable National Pollutant Discharge Elimination System (NPDES) permit requirements for the project, including the possible submittal of a Notice of Intent (NOI) for general permit coverage.
3. The NOI will be submitted for review by the State Historic Preservation Division of the Department of Land and Natural Resources. The applicant will submit a copy of its request for review by SHPD or SHPD's determination letter for the project along with the NOI or NPDES permit application, as applicable.

Alec Wong, P.E., Chief
January 30, 2008
Page 2

4. All discharges related to project construction or operation activities will comply with the applicable State Water Quality Standards as specified in HAR, Chapter 11-54 and/or permitting requirements as specified in HAR, Chapter 11-55. Discharges will be kept to a minimum through the application of engineering BMPs.

We appreciate the input we received from your office. A copy of the Draft Environmental Assessment will be provided for your review and comment.

Should you have any questions, please do not hesitate to contact me at (808) 244-2015.

Very truly yours,



Kyle Ginoza, Project Manager

KG:lfm

cc: Peter and Deborah Martin
Kirk Tanaka, R.T. Tanaka Engineers, Inc.

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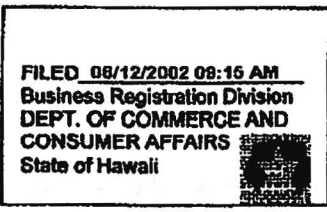
STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
Honolulu

In the Matter of the Incorporation	}
of	}
OLOWALU MAKAI-KOMOHANA	}
HOMEOWNERS ASSOCIATION, INC.	}
	}

200433 D2

ARTICLES OF INCORPORATION

(Section 415B-34, Hawaii Revised Statutes)



MANCINI, WELCH & GEIGER LLP
Thomas D. Welch, Jr.
33 Lono Avenue, Suite 470
Kahului, Hawaii 96732

200220025

STATE OF HAWAII

DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
Honolulu

In the Matter of the Incorporation)
)
 of)
)
 OLOWALU MAKAI-KOMOHANA)
 HOMEOWNERS ASSOCIATION, INC.)
)
)

ARTICLES OF INCORPORATION

The undersigned, desiring to form a non-profit corporation under the laws of the State of Hawaii, does hereby execute the following Articles of Incorporation:

ARTICLE I
CORPORATE NAME

The name of the corporation shall be:

OLOWALU MAKAI-KOMOHANA HOMEOWNERS ASSOCIATION, INC.

ARTICLE II
CORPORATE LOCATION

The address of the corporation's initial office is:

173 Hooohana Street
Kahului, Hawaii 96732

The corporation's principal place of business and mailing address may be changed from time to time by action of the Board of Directors of the corporation from time to time.

06/11/200220025

**ARTICLE III.
DURATION**

The period of the corporation's duration is perpetual.

**ARTICLE IV
CORPORATE PURPOSES**

Section 1. The corporation is organized exclusively for the following purposes:

(a) To act in all respects as a neighborhood homeowners' association for the purpose of owning, maintaining and operating roads, common areas and common facilities located within the subdivision known as "OLOWALU MAKAI-KOMOHANA", at Kihei, Maui, Hawaii.

(b) To carry out all functions and exercise all powers as described in the Olowalu Makai-Komohana Declaration of Covenants, Conditions and Restrictions, to be recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____ as they may be amended from time to time (the "CC&Rs") including but not limited to the ownership, management, regulation and operation of certain common areas and facilities, the levy, assessment and collection of periodic common expenses against the members and their properties as more particularly described in the CC&Rs and the Bylaws of the corporation, and the prosecution and defense of legal actions in connection with said functions.

(c) The transaction of any and all lawful activities for which nonprofit corporations may be incorporated under Chapter 415B, Hawaii Revised Statutes, as it may be amended from time to time, or any successor statute.

**ARTICLE V
CORPORATE POWERS**

Section 1. The corporation shall have all powers, rights, privileges and immunities, and shall be subject to all of the liabilities conferred or imposed by law upon corporations of this nature, and shall be subject to and have all the benefits of all general laws with respect to corporations.

Section 2. The corporation shall have, in addition to the general powers conferred upon it under the statutes of the State of Hawaii, the following powers subject to the limitations described in Article VI:

06/13/200220025

06/17/200220025

1. To indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation) if that person is or was a director, officer, employee or other agent of the corporation, against expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a pleas of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interest of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful;

2. To indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor because that person is or was a director, officer, employee or other agent of the corporation, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation except that no indemnification shall be made in respect of any claim, issue, or matter as to which the person shall have been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the corporation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

3. Without limiting the generality of the foregoing, all powers which a Hawaii nonprofit corporation may exercise under Section 415B-6, Hawaii Revised Statutes, as it may be amended from time to time, or any successor statute.

ARTICLE VI LIMITATIONS

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to the corporation.

ARTICLE VII MEMBERS

The corporation shall have members. The "Owners" of each "Property" (as those terms are defined in the CC&Rs) within Olowalu Makai-Komohana shall automatically be members of this corporation. The membership in this corporation may be transferred or

encumbered only with and to the same extent as a transfer of an ownership interest in a Property. In the event any interest in a Property is conveyed without mention of this membership, this membership shall be deemed to be automatically transferred with said Property. A person's membership shall terminate at such time as said person shall no longer be an owner of any Property in Olowalu Makai-Komohana.

ARTICLE VIII DIRECTORS

The management of the business and affairs of the corporation and the control and distribution of its assets shall be vested in a Board of Directors, which shall consist of such number of directors as shall be fixed by the Bylaws of the corporation, but in no event less than three (3) individuals. The members may increase or decrease the number of directors at any annual meeting or any other meeting properly called for such purpose. Further, at least one director shall be a resident of the State of Hawaii. The directors shall be qualified, nominated, elected and appointed as is provided for in the Bylaws. The Board of Directors shall have full power to control and direct the business affairs of the corporation, subject, however, to any limitations contained herein or in the Bylaws of the corporation or by statute. Each initial director of the corporation shall serve until his successor is duly chosen. The initial Board of Directors is fixed at three and the directors of the corporation and their residence addresses, are as follows, to serve until their successors are elected and qualified:

<u>Name</u>	<u>Residence Address</u>
Peter K. Martin	590-A Old Stable Road Paia, Hawaii 96779
James C. Riley	590 Old Stable Road Paia, Hawaii 96779
Glenn E. Tremble	140 Makahiki Street Paia, Hawaii 96779

ARTICLE IX OFFICERS

The officers of the corporation shall consist of a president, vice-president, secretary, treasurer and such other assistant officers as the Board of Directors deems necessary, with such qualifications, duties and powers as are provided for in the Bylaws. The officers have been elected or appointed at such time and in such manner and for such terms as prescribed in the Bylaws of the corporation. Any two or more offices may be held by the same person, provided that the corporation shall have at least two persons as officers. The initial officers and their residence addresses are as follows:

<u>Office</u>	<u>Name</u>	<u>Residence Address</u>
President	Peter K. Martin	590-A Old Stable Road Paia, Hawaii 96779
Vice President	James C. Riley	590 Old Stable Road Paia, Hawaii 96779
Secretary	Glenn E. Tremble	140 Makahiki Street Paia, Hawaii 96779
Treasurer	Peter K. Martin	590-A Old Stable Road Paia, Hawaii 96779

**ARTICLE X
BYLAWS**

The Bylaws of the corporation shall be adopted by the Board of Directors of the corporation and may be amended from time to time by the Board of Directors.

**ARTICLE XI
DISSOLUTION**

Upon the dissolution of the corporation, or the winding up of its affairs, the assets of the corporation shall be distributed exclusively to an incorporated or unincorporated association of owners of Properties in Olowalu Makai-Komohana, which shall be formed for the purpose of carrying out the functions of the "Association" as defined in the CC&Rs, as it shall then exist.

**ARTICLE XII
AMENDMENT**

The Articles of Incorporation set forth herein shall be subject to amendment from time to time as provided by law, except that no amendment shall be made which would change the objects and purposes of this corporation and each amendment shall conform to the Declaration, Bylaws and Hawaii law.

06/15, -00220025

We certify under the penalties of Section 415B-158, Hawaii Revised Statutes, that we have read the foregoing statements and that the same are true and correct.

Witness my hand this 7th day of June, 2002.



Thomas D. Welch, Jr.
(Signature of Incorporator)

06/11, 200220025

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
Honolulu


In the Matter of the Incorporation)
)
 of)
)
 OLOWALU MAUKA)
 HOMEOWNERS ASSOCIATION, INC.)
)

200385 D2

ARTICLES OF INCORPORATION

(Section 415B-34, Hawaii Revised Statutes)

FILED 06/06/2002 08:03 AM
Business Registration Division
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
State of Hawaii



MANCINI, WELCH & GEIGER LLP
Thomas D. Welch, Jr.
33 Lono Avenue, Suite 470
Kahului, Hawaii 96732

06/07/02 - J220025

STATE OF HAWAII
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
Business Registration Division
Honolulu

In the Matter of the Incorporation)
)
 of)
)
 OLOWALU MAUKA)
 HOMEOWNERS ASSOCIATION, INC.)
)
)
)

ARTICLES OF INCORPORATION

The undersigned, desiring to form a non-profit corporation under the laws of the State of Hawaii, does hereby execute the following Articles of Incorporation:

ARTICLE I
CORPORATE NAME

The name of the corporation shall be:

OLOWALU MAUKA HOMEOWNERS ASSOCIATION, INC.

ARTICLE II
CORPORATE LOCATION

The address of the corporation's initial office is:

173 Ho'ohana Street
Kahului, Hawaii 96732

The corporation's principal place of business and mailing address may be changed from time to time by action of the Board of Directors of the corporation from time to time.

06/07 / J220025

ARTICLE III.
DURATION

The period of the corporation's duration is perpetual.

ARTICLE IV
CORPORATE PURPOSES

Section 1. The corporation is organized exclusively for the following purposes:

(a) To act in all respects as a neighborhood homeowners' association for the purpose of owning, maintaining and operating roads, common areas and common facilities located within the subdivision known as "OLOWALU MAUKA", at Kihei, Maui, Hawaii.

(b) To carry out all functions and exercise all powers as described in the Olowalu Mauka Declaration of Covenants, Conditions and Restrictions, to be recorded in the Bureau of Conveyances of the State of Hawaii as Document No. _____ as they may be amended from time to time (the "CC&Rs") including but not limited to the ownership, management, regulation and operation of certain common areas and facilities, the levy, assessment and collection of periodic common expenses against the members and their properties as more particularly described in the CC&Rs and the Bylaws of the corporation, and the prosecution and defense of legal actions in connection with said functions.

(c) The transaction of any and all lawful activities for which nonprofit corporations may be incorporated under Chapter 415B, Hawaii Revised Statutes, as it may be amended from time to time, or any successor statute.

ARTICLE V
CORPORATE POWERS

Section 1. The corporation shall have all powers, rights, privileges and immunities, and shall be subject to all of the liabilities conferred or imposed by law upon corporations of this nature, and shall be subject to and have all the benefits of all general laws with respect to corporations.

Section 2. The corporation shall have, in addition to the general powers conferred upon it under the statutes of the State of Hawaii, the following powers subject to the limitations described in Article VI:

1. To indemnify any person who was or is a party or is threatened to be made a party to any proceeding (other than an action by or in the right of the corporation) if that person is or was a director, officer, employee or other agent of the corporation, against

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expenses (including attorneys' fees), judgments, fines, settlements and other amounts actually and reasonably incurred in connection with the proceeding if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal proceeding, had no reasonable cause to believe the conduct of the person was unlawful. The termination of any proceeding by judgment, order, settlement, conviction, or upon a pleas of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which the person reasonably believed to be in or not opposed to the best interest of the corporation or that the person had reasonable cause to believe that the person's conduct was unlawful;

2. To indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action by or in the right of the corporation to procure a judgment in its favor because that person is or was a director, officer, employee or other agent of the corporation, against expenses (including attorneys' fees) actually and reasonably incurred by the person in connection with the defense or settlement of the action if the person acted in good faith and in a manner the person reasonably believed to be in or not opposed to the best interests of the corporation except that no indemnification shall be made in respect of any claim, issue, or matter as to which the person shall have been adjudged to be liable for negligence or misconduct in the performance of the person's duty to the corporation unless and only to the extent that the court in which the action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, the person is fairly and reasonably entitled to indemnity for such expenses as the court deems proper.

3. Without limiting the generality of the foregoing, all powers which a Hawaii nonprofit corporation may exercise under Section 415B-6, Hawaii Revised Statutes, as it may be amended from time to time, or any successor statute.

ARTICLE VI LIMITATIONS

No part of the net earnings of the corporation shall inure to the benefit of, or be distributable to, its directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services actually rendered to the corporation.

ARTICLE VII MEMBERS

The corporation shall have members. The "Owners" of each "Property" (as those terms are defined in the CC&Rs) within Olowalu Mauka shall automatically be members of this corporation. The membership in this corporation may be transferred or encumbered only with and to the same extent as a transfer of an ownership interest in a Property. In the event any interest in a Property is conveyed without mention of this membership, this

membership shall be deemed to be automatically transferred with said Property. A person's membership shall terminate at such time as said person shall no longer be an owner of any Property in Olowalu Mauka.

ARTICLE VIII DIRECTORS

The management of the business and affairs of the corporation and the control and distribution of its assets shall be vested in a Board of Directors, which shall consist of such number of directors as shall be fixed by the Bylaws of the corporation, but in no event less than three (3) individuals. The members may increase or decrease the number of directors at any annual meeting or any other meeting properly called for such purpose. Further, at least one director shall be a resident of the State of Hawaii. The directors shall be qualified, nominated, elected and appointed as is provided for in the Bylaws. The Board of Directors shall have full power to control and direct the business affairs of the corporation, subject, however, to any limitations contained herein or in the Bylaws of the corporation or by statute. Each initial director of the corporation shall serve until his successor is duly chosen. The initial Board of Directors is fixed at three and the directors of the corporation and their residence addresses, are as follows, to serve until their successors are elected and qualified:

<u>Name</u>	<u>Residence Address</u>
Peter K. Martin	590-A Old Stable Road Paia, Hawaii 96779
James C. Riley	590 Old Stable Road Paia, Hawaii 96779
Glenn E. Tremble	140 Makahiki Street Paia, Hawaii 96779

ARTICLE IX OFFICERS

The officers of the corporation shall consist of a president, vice-president, secretary, treasurer and such other assistant officers as the Board of Directors deems necessary, with such qualifications, duties and powers as are provided for in the Bylaws. The officers have been elected or appointed at such time and in such manner and for such terms as prescribed in the Bylaws of the corporation. Any two or more offices may be held by the same person, provided that the corporation shall have at least two persons as officers. The initial officers and their residence addresses are as follows:

<u>Office</u>	<u>Name</u>	<u>Residence Address</u>
President	Peter K. Martin	590-A Old Stable Road Paia, Hawaii 96779
Vice President	James C. Riley	590 Old Stable Road Paia, Hawaii 96779
Secretary	Glenn E. Tremble	140 Makahiki Street Paia, Hawaii 96779
Treasurer	Peter K. Martin	590-A Old Stable Road Paia, Hawaii 96779

ARTICLE X BYLAWS

The Bylaws of the corporation shall be adopted by the Board of Directors of the corporation and may be amended from time to time by the Board of Directors.

ARTICLE XI DISSOLUTION

Upon the dissolution of the corporation, or the winding up of its affairs, the assets of the corporation shall be distributed exclusively to an incorporated or unincorporated association of owners of Properties in Olowalu Mauka, which shall be formed for the purpose of carrying out the functions of the "Association" as defined in the CC&Rs, as it shall then exist.

ARTICLE XII AMENDMENT

The Articles of Incorporation set forth herein shall be subject to amendment from time to time as provided by law, except that no amendment shall be made which would change the objects and purposes of this corporation and each amendment shall conform to the Declaration, Bylaws and Hawaii law.

06/07, J0220025

We certify under the penalties of Section 415B-158, Hawaii Revised Statutes, that we have read the foregoing statements and that the same are true and correct.

Witness my hand this 6th day of June, 2002.



Thomas D. Welch, Jr.
(Signature of Incorporator)

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STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED

DEC 19, 2001 01:00 PM

Doc No(s) 2001-199586

/s/ CARL T. WATANABE
ACTING
REGISTRAR OF CONVEYANCES

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup () To:

THOMAS D. WELCH, JR.
Mancini, Rowland & Welch
33 Lono Avenue, Suite 470
Kahului, Hawaii 96732

TG: 200138092-5

TGE: A12040933

LYNN SUEDA

TDW:59289.3/October 16, 2001
TMK (2) 4-8-3:5 (por.)

Total Number of Pages: 80

Olowalu Makai-Komohana

Declaration of Covenants, Conditions and Restrictions

Declarant: Olowalu Elua Associates LLC
173 Hooohana Street
Kahului, Hawaii 96732

LOWALU MAKAI-KOMOHANA

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

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(a) Rezoning of the Property from agricultural zoning to rural or other zone (if needed to permit additional lots under applicable zoning rules at that time); and

(b) The approval by Declarant of each subdivision plan.

Immediately after each subdivision or resubdivision, if any, shall become effective, each new lot shall be deemed to be a separate "Property" under this Declaration.

This Declaration hereby prohibits the division of ownership of any Property by submission of a Property to a Condominium Property Regime under HRS Chapter 514A or any successor statute.

3.20 Timeshares. No timesharing plans as defined in HRS Chapter 514E or any successor statute or any comparable Maui County Ordinance shall be permitted.

3.21 Development and Shoreline Matters. No structure shall be constructed within 150 feet of the certified shoreline and certain other restrictions shall apply as set forth on Exhibit C attached hereto and made a part hereof.

3.22 Community Gate. An entry gate may be installed within the main access road in the subdivision at the option of the Association provided that the decision to install and maintain such gate shall be approved by the affirmative vote or written consent of a majority of the Properties in Olowalu Makai-Komohana. Said gate, if so installed, shall be a common area of Olowalu Makai-Komohana and shall be maintained and operated by the Association as a common expense of the Neighborhood.

3.23 Cultural Reserve Buffer. Lot 3 is subject to a buffer/setback 30 feet deep along the northwesterly boundary of Lot 3 where it abuts Lot 4-D and the Cultural Reserve Easement R-1. No dwellings or other structures may be constructed within the 30 foot buffer except a boundary wall which may not exceed four feet in height.

3.24 Shoreline Setback. A shoreline setback of 150 feet is required for construction of improvements or for alterations to topography and shall be governed by the applicable rules and regulations of the County of Maui. In addition, as required by the Unilateral Agreement dated as of February 1, 2001, to be recorded in the State of Hawaii Bureau of Conveyances, the setback for each Property shall be established from the certified shoreline regardless of whether that shoreline is located on the Property or is makai of the Property abutting a government beach reserve. Also, in establishing the shoreline for purposes of determining the setback, the erosion rate shall be considered, as established through the review of historic shoreline data for the area. No structures on any Property shall encroach into the shoreline setback area, to ensure that future shoreline erosion and storm wave action will not adversely affect structural development on said Property.

3.25 Public Lateral Access. Public lateral access along the shoreline shall be provided and landscaping of the area of any Property within 50 feet of the shoreline should be spaced far enough apart so as not to interfere with lateral access. In many cases the shoreline area and lateral access area will be located within the government beach reserve abutting the makai boundary line of the Property and lateral pedestrian access will not encroach on said Property. In other areas, where the shoreline is less than 20 feet makai of the Property boundary or the shoreline encroaches into the Property, the pedestrian corridor shall be provided over the Property within 20 feet of the shoreline, except for areas where an existing physical barrier would cause the corridor to meander around the barrier.

3.26 Native and Endangered Species. Certain native and endangered species have been sited within Olowalu. Endangered bird sightings include but are not limited to the Nene - Hawaiian goose, Alae Ke'okeo - Hawaiian coot, Koloa - Hawaii duck and the Ae'o - Hawaiian stilt. Black Crown Night Herons and the Dark-Rumped Petrel have also been noted. Endangered species are protected under federal and state laws, and all occupants of Properties must take precautions against domestic dogs and cats endangering any endangered animals. Also all Owners and occupants of Properties understand and accept that crop damage could occur from these water birds. The State of Hawaii Department of Forestry and Wildlife is the local management and enforcement agency.

3.27 Archaeological Sites. There are two archaeological preservation sites on Lot 4-A, defined as Site No. 1602 (the old Olowalu Mill site) and Site No. 4698 located to the west of Site No. 1602. These sites will be preserved and maintained in accordance with the archaeological preservation and monitoring plans required by applicable governmental authorities.

3.28 Compliance With Design Standards and Laws. All structures, shall comply with (a) the Design Standards attached hereto as Exhibit B as they may be amended by the Declarant from time to time and (b) all applicable laws, rules and regulations. Where requirements in this Declaration are more stringent than applicable laws, rules and regulations, the requirements in this Declaration shall govern.

3.29 Other Limitations Required by the County of Maui. Attached as Exhibit C is a list of additional restrictions which encumber each property and which have been required by the County of Maui Planning Commission and the Department of Public Works and Waste Management as a condition of obtaining certain approvals for the subdivision.

4. ARCHITECTURAL CONTROLS.

4.01 Purpose. The purpose of the architectural controls set forth in this Article 4 is not to regulate all details of an owner's construction and landscaping activity, but instead is to give the Declarant the means to attempt in its discretion to avoid strange, jarring or inappropriate structures being initially developed within Olowalu Makai-

11.08 Records of Ownership and Notices. The Declarant, the Association and the Architectural Design Committee shall be entitled to rely conclusively on the records of ownership of the Properties provided to the Association pursuant to Section 11.07 and 2.07 above, for all purposes, including, but not limited to, names and addresses for all communications, notices, service of process, approvals, voting and consents, it being the obligation and burden of each Owner of each Property to ensure that the Declarant and the Association have ownership records which are accurate and up-to-date. The Declarant, the Association and the Architectural Design Committee may also conclusively rely, in the sole discretion of each, on the records of ownership and addresses of Owners of each Property as shown on the real property tax records of Maui County in any particular case.

Executed the day and year first above written.

Olowalu Elua Associates LLC

By: Olowalu Land Company, LLC,
Its: Managing Member,

Peter H. Martin
By: *Peter H. Martin*
Its: *authorized member*