

COUNCIL OF THE COUNTY OF MAUI

**ECONOMIC DEVELOPMENT, AGRICULTURE,
AND RECREATION COMMITTEE**

October 1, 2010

**Committee
Report No.** _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Economic Development, Agriculture, and Recreation Committee, having met on August 5, 2010 (site inspection, and meeting at Paia Community Center) and September 16, 2010, makes reference to County Communication No. 08-46, from the Director of Parks and Recreation, transmitting a proposed resolution entitled "WAIVER OF COMFORT STATION AND PARKING AREA REQUIREMENTS IN THE E PAEPAE KA PUKO`A SUBDIVISION, PAIA, MAUI, HAWAII, PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE".

The purpose of the proposed resolution is to approve the waiver of requirements to provide comfort stations and parking areas in a privately owned and maintained park in the E Paepae Ka Puko`a Subdivision, Paia, Maui. The park consists of approximately 1.942 acres, TMK: (2) 3-8-02:009 and TMK: (2) 3-8-01:003 (por.).

Your Committee notes that Section 18.16.320(E)(5), Maui County Code, states: "The subdivider shall improve the site with lot grading, grass planting, automatic irrigation, parking areas, adequate drainage, and comfort stations; provided, that the council may waive any of these requirements if the director of parks and recreation determines that such improvements are available nearby, are impractical, or are unnecessary."

According to the Director of Parks and Recreation, the Department supports the waiver of a comfort station and parking area. The Department considers a comfort station and parking lot unnecessary for such a small private neighborhood park in the 23-lot development.

Your Committee voted 3-1 to recommend adoption of the proposed resolution and filing of the communication. Committee Chair Johnson, and members Baisa and Molina voted "aye". Vice-Chair Kaho`ohalahala voted "no". Committee member Pontanilla was excused.

COUNCIL OF THE COUNTY OF MAUI

**ECONOMIC DEVELOPMENT, AGRICULTURE,
AND RECREATION COMMITTEE**

October 1, 2010
Page 2

**Committee
Report No.** _____

Your Economic Development, Agriculture, and Recreation Committee
RECOMMENDS the following:

1. That Resolution No. _____, attached hereto, entitled "WAIVER OF COMFORT STATION AND PARKING AREA REQUIREMENTS IN THE E PAEPAE KA PUKO'A SUBDIVISION, PAIA, MAUI, HAWAII, PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE", be ADOPTED; and
2. That County Communication No. 08-46 be FILED.

COUNCIL OF THE COUNTY OF MAUI
**ECONOMIC DEVELOPMENT, AGRICULTURE,
AND RECREATION COMMITTEE**

October 1, 2010
Page 3

Committee
Report No. _____

This report is submitted in accordance with Rule 7 of the Rules of the Council.



JO ANNE JOHNSON, Chair

ear:cr:10003aa:skk

Resolution

No. _____

WAIVER OF COMFORT STATION AND PARKING
AREA REQUIREMENTS IN THE E PAEPAE KA PUKO`A
SUBDIVISION, PAIA, MAUI, HAWAII, PURSUANT TO
SECTION 18.16.320, MAUI COUNTY CODE

WHEREAS, OLD STABLE LLC (hereinafter called the "Subdivider") has developed a residential subdivision known as the E Paepae Ka Puko`a Subdivision and an agricultural subdivision known as the E Paepae Ka Puko`a Subdivision situate at Paia, Maui, Hawaii; and

WHEREAS, in order to meet the requirements of Section 18.16.320, Maui County Code, requiring the dedication of lands for parks and playgrounds, the Subdivider has recorded a Unilateral Agreement establishing a privately owned and maintained park on Lot 18 of E Paepae Ka Puko`a Subdivision, Subdivision File Numbers 3.2123 and 3.2177, area approximately 1.942 acres, as described in the property description attached hereto in Exhibit "1"; and

WHEREAS, Subdivider has requested that the requirement to provide comfort stations and parking areas, as set forth in Section 18.16.320(E)(5), Maui County Code, be waived; and

WHEREAS, pursuant to Section 18.16.320(E)(5), Maui County Code, the Council, by resolution, may waive the requirement to provide comfort stations and parking areas; and

WHEREAS, the Director of the Department of Parks and Recreation has recommended approval of the Subdivider's request for the subject waiver, a copy of the department's recommendation letter is attached hereto and made a part hereof as Exhibit "2"; now therefore,

BE IT RESOLVED by the Council of the County of Maui:

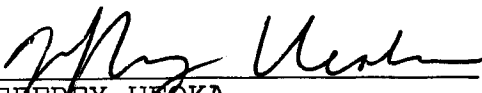
1. That the Council herein waives the requirement to provide comfort stations and parking areas as set forth in Section 18.16.320(E)(5), Maui County Code; and

Resolution No. _____

2. That it does hereby authorize the Mayor of the County of Maui, or the Mayor's duly authorized representative, to execute all necessary documents in connection with the acceptance of said waiver; and

3. That certified copies of this resolution be transmitted to the Mayor of the County of Maui, the Director of Parks and Recreation, and the Subdivider.

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY UEOKA
Deputy Corporation Counsel
County of Maui

S:\ALL\JTU\RESOS\OldStablewaiver.wpd

κ



R-94 STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
APR 09, 2007 08:01 AM
Doc No(s) 2007-061901



/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 29

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail Pickup () To:

R/S

Office of County Clerk
County of Maui
200 South High Street
Wailuku, Hawaii 96793

TG ACCOM P377219

TDW/96062.2

Total No. of Pages: 8

Affects Tax Map Key (Maui): (2) 3-8-2:3 (por.)

UNILATERAL AGREEMENT

THIS INDENTURE, made this 5th day of February, 2007, by OLD STABLE LLC, a Hawaii limited liability company, whose sole member is Henry Spencer, whose mailing address is 464 Laulea Place, Paia, Hawaii 96779, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Spreckelsville, Paia, Maui, Hawaii, comprised of approximately 1.942 acres, and identified as Lot 18 of E Paepae Ka Puko'a Subdivision.

WITNESSETH:

WHEREAS, the Declarant is developing the parcel into a residential subdivision with sixteen (16) lots and single family dwellings known as "E Paepae Ka Puko'a" (County of Maui Development Services Administration Subdivision File No. 3.2123) and an agricultural subdivision with seven (7) lots known as "E Paepae Ka Puko'a" (County of Maui Development Services Administration Subdivision File No. 3.2177); and

WHEREAS, the E Paepae Ka Puko'a improvements will include a centrally located private park on Lot 18 of E Paepae Ka Puko'a, as depicted in the map attached hereto as Exhibit "A" (the "Park"), and as described on Exhibit "B" attached hereto, containing 1.942 acres; and

WHEREAS, the Park will be privately owned, developed and maintained in perpetuity by Declarant, its successors and assigns (specifically the E Paepae Ka Puko'a Homeowners' Association, Inc. (the "Association") once said Association is established); and

WHEREAS, the Association will be responsible for ensuring the safety and security of the Park and the health, safety and welfare and well-being of residents and guests; and

WHEREAS, the Park will be developed and maintained in perpetuity in accordance with the terms and conditions specifically set forth herein in order for the park to satisfy the relevant provisions of Section 18.16.320 of the Maui County Code ("MCC"), relating to park requirements for new subdivisions; and

WHEREAS, the Declarant is requesting the Department of Parks and Recreation to recommend subdivision approval prior to the County Council approving the Director of Parks and Recreation recommendation to waive the improvements for a comfort station and parking to comply with relevant Sections of Maui County Code ("MCC") Chapter 19.16.320; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the provisions of Subsection 18.16.320.E.9, MCC; and

NOW, THEREFORE, the Declarant agrees and covenants as follows:

1. That the Declarant shall secure a Parks Dedication Bond in favor of the County of Maui (the "County") in the amount of \$98,930.00 and that such bond shall be paid, disbursed or released to the County in the event that the Maui County Council does not approve the park improvements waiver as recommended by the Director of Parks and Recreation (the "Director") for a comfort station and parking facilities (the "Waiver"). However, upon approval by the County Council of the recommendation by the Director to waive the improvements for a comfort station and parking facilities the County shall return the bond to the Declarant within ten (10) days of the date the County Council approves said waiver pursuant to Section 18.16.320(B) of the MCC;
2. That the Park will be developed and maintained by Declarant, its

successors and assigns in compliance with all County of Maui requirements;

3. That the Park will be graded, landscaped with grass and trees, and improved with an irrigation system and adequate drainage, and that such improvements will be maintained in perpetuity by the Declarant, its successors and assigns;
4. That the use of the Park will be restricted to park purposes;
5. That the responsibilities of the Declarant, its successors and assigns herein concerning the maintenance and use of the Park shall be enforceable by the County of Maui;
6. That the park will be open to the public, subject to reasonable restrictions on use and access exercised by the Declarant, its successors and assigns to protect the health, safety, welfare and well-being of E Paepae Ka Puko'a residents, guests and the general public;
7. The Declarant's agreements with respect to the use and maintenance of the Park herein are in satisfaction of the park assessment requirements under Section 18.16.320;
8. That the term "Declarant" and any pronoun in reference thereto, whenever used herein, shall be construed to mean the singular, or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

DECLARANT:

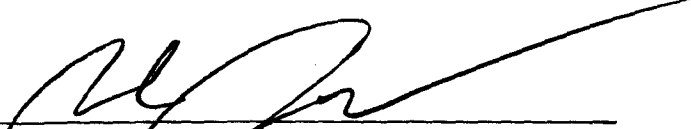
OLD STABLE LLC

By: 

Henry Spencer

Its: Member

APPROVED AS TO FORM AND LEGALITY:



Deputy Corporation Counsel
County of Maui
MICHAEL J. HOPPER

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 5th day of February, 2007, before me personally appeared **HENRY SPENCER**, 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.

L.S.

Laura Gima
Notary Public, State of Hawaii
Printed Name: Laura Gima
My Commission Expires: February 29, 2008

3343

07/05/07
SUBDIVISION

LOT 1
1.203 Ac.
less .071 Ac. (Stem)
1.132 Ac. (Net Area)

Spreckels

LOT 2
1.123 Ac.

LOT 22

LOT 17
0.882 Ac.

LOT 18
1.942 Ac.

LOT 27
0.545 Ac.

LOT 26
0.230 Ac.

LOT 1
0.784 Ac.

FLOOD ZONE A4

EASEMENT A-2
SEE INSET B

Existing Roadway
Easement (20-ft. wide)

Existing Easement B

Existing Easement D

EASEMENT F-1
EASEMENT F-2

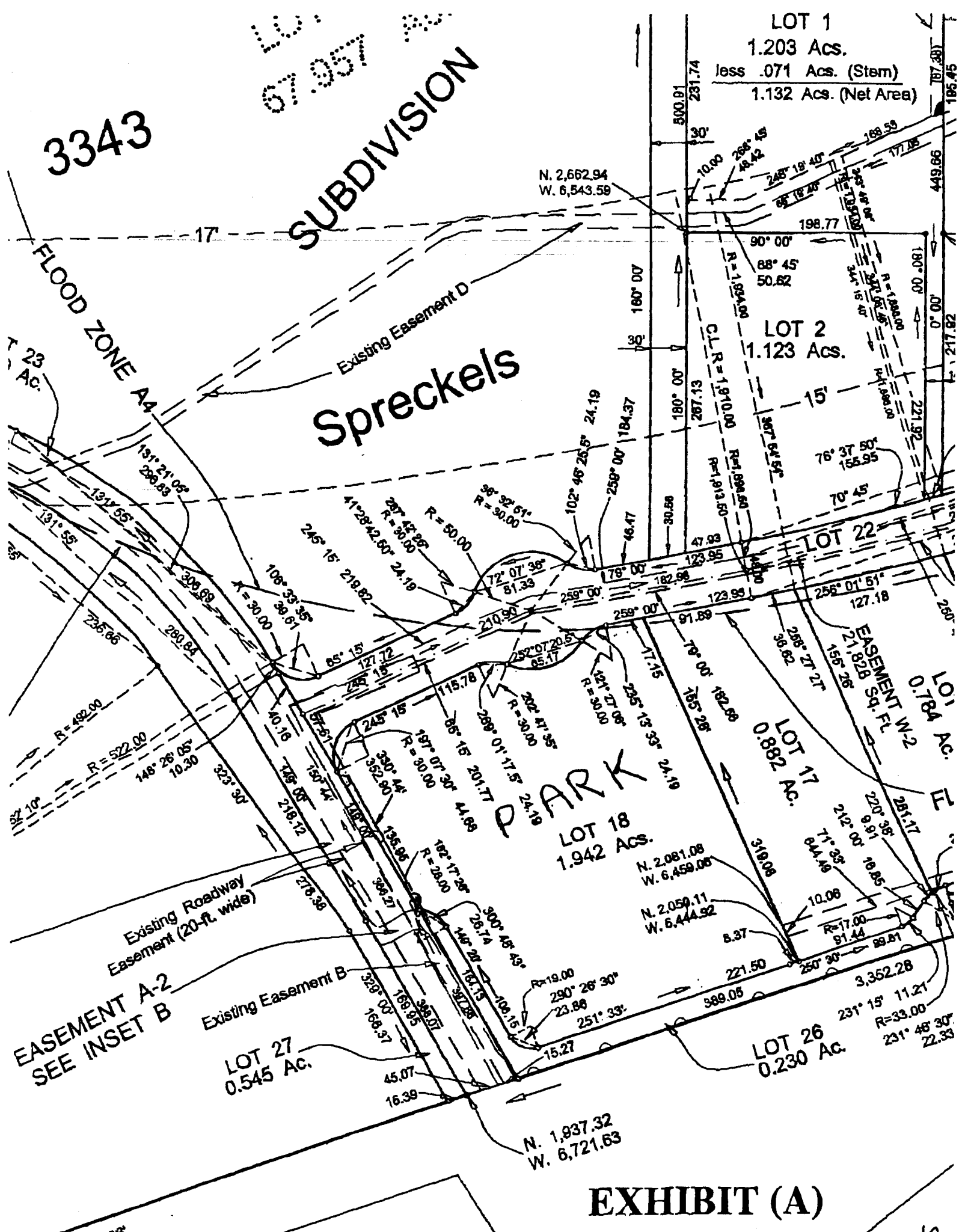
N. 1,937.32
W. 6,721.63

N. 2,662.94
W. 6,543.59

N. 2,081.08
W. 6,459.06

N. 2,059.11
W. 6,444.92

EXHIBIT (A)



DESCRIPTION

E PAEPAE KA PUKO'A SUBDIVISION

LOT 18

All of that certain parcel of land, being a portion of Lot 12 of the Ulmer Subdivision, being also a portion of Grant 3343 to Claus Spreckels situated at Spreckelsville, Wailuku, Island and County of Maui, State of Hawaii

Beginning at a pipe at the southeasterly corner of this lot, said pipe being also the southwesterly corner of Lot 17 of the E Paepae Ka Puko'a Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUNENE 2" being 2,050.11 feet North and 6,444.92 feet West and running by azimuths measured clockwise from True South:

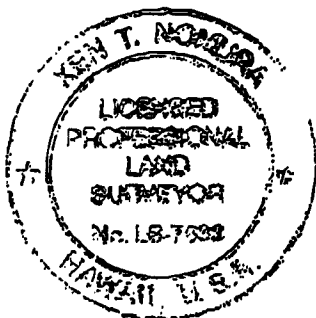
1. 70° 30' 8.37 feet along Lot 26 of the E Paepae Ka Puko'a Subdivision to a pipe;
2. 71° 33' 221.50 feet along same to a pipe;
3. Thence along same on a curve to the left with a radius of 19.00 feet, the chord azimuth and distance being:
110° 26' 30" 23.86 feet to a pipe;
4. 149° 20' 108.15 feet along Lot 26 of the E Paepae Ka Puko'a Subdivision to a pipe;
5. Thence along same on a curve to the left with a radius of 28.00 feet, the chord azimuth and distance being:
120° 48' 43" 26.74 feet to a pipe;
6. 149° 00' 135.95 feet along the easterly side of Stable Road (Lot 23 of the E Paepae Ka Puko'a Subdivision) to a pipe;
7. Thence along the southerly side of Kapukaulua Place (Lot 22 of the E Paepae Ka Puko'a Subdivision) on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:
197° 07' 30" 44.68 feet to a pipe;

8. 245° 15' 115.78 feet along the southerly side of Kapukaulua Place to a pipe;
9. Thence along same on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being: 269° 01' 17.5" 24.19 feet to a pipe;
10. Thence along same on a curve to the left with a radius of 50.00 feet, the chord azimuth and distance being: 252° 07' 20.5" 65.17 feet to a pipe;
11. Thence along same on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being: 235° 13' 33" 24.19 feet to a pipe;
12. 259° 00' 32.06 feet along the southerly side of Kapukaulua Place to a pipe;
13. 335° 26' 319.08 feet along Lot 17 of the E Paepae Ka Puko'a Subdivision to the point of beginning and containing an Area of 1.942 Acres.

Prepared by: A&B Properties, Inc.
Kahului, Maui, Hawaii

April 24, 2006

This work was prepared by me or under my supervision.



Ken T. Nomura 4/30/08
 Ken T. Nomura
 Licensed Professional Land Surveyor
 Certificate No. LS-7633
 Expiration Date: 4/30/08

ME
27/34-s

PARK DEDICATION BOND

Bond No. 70BCSDZ7443

KNOW ALL MEN BY THESE PRESENTS, that we, OLD STABLE LLC, as Principal, and HARTFORD FIRE INSURANCE COMPANY, authorized to conduct surety business in the State of Hawaii, as Surety, are held and firmly bound unto the County of Maui, as Obligee, in the sum of NINETY EIGHT THOUSAND NINE HUNDRED THIRTY AND NO/100 (\$98,930.00) Dollars, lawful money of the United States of America, for the payment of which, well and truly to be made, we bind ourselves, our heirs, legal representatives, successors and assignees, jointly and severally, firmly by these presents.

Whereas, Principal has been required to provide a surety bond pursuant to Maui County Code 18.16.320 E.9 in relation to completion of certain improvements described in Paragraph 2 and Exhibit A of the Unilateral Agreement dated May 17, 2006.

NOW THEREFORE, the condition of this obligation is such that, if Principal shall comply with the terms and conditions of Maui County Code 18.16.320 E.9 in relation to the completion of certain improvements (i.e. grading, landscaping, irrigation and drainage system) described in Paragraph 2 and Exhibit A of the Unilateral Agreement dated May 17, 2006, then this obligation shall be null and void, otherwise to remain in full force and effect.

SUBJECT, however, to the following additional expressed conditions:

1. Obligee's right to recover under this bond is conditioned upon the Obligee having fulfilled its duties and obligations to the Principal.
2. The liability of the Surety under this bond is limited to the penal sum of NINETY EIGHT THOUSAND NINE HUNDRED THIRTY AND NO/100 (\$98,930.00) Dollars regardless of the number of years this bond is in effect.
3. The surety shall have the right to withdraw as Surety from this bond, except as to any liability already incurred or accrued, and may do so upon giving the said Principal and the said Obligee thirty (30) days written notice to that effect. At the end of said thirty (30) days period of notice, the liability of the Surety under this bond shall cease, and said bond shall thereupon terminate and be of no force or effect, except as to any liabilities already incurred or accrued thereunder.
4. No suit, action or other proceeding to recover under this bond by Obligee shall be sustained unless initiated within six (6) months of cancellation or termination as above provided.

Signed, sealed and dated this 27th day of June, 2006.

PRINCIPAL: OLD STABLE LLC

By: 

SURETY: HARTFORD FIRE INSURANCE COMPANY

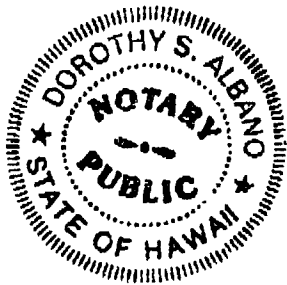
By: 

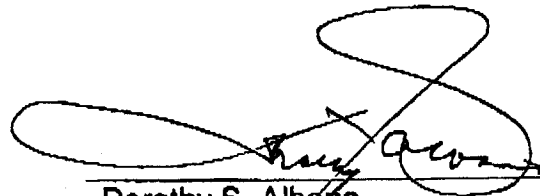
Maria Morales Minkel, Attorney-in-Fact

State of Hawaii)
) ss
City and County of Honolulu)

On this 27th day of June, 2006, before me personally appeared **Maria Morales Minkel**, to me personally known, who, being by me duly sworn, did say that she is the attorney-in-fact of **Hartford Fire Insurance Company**, duly appointed under a power of attorney which is now in full force and effect; and that said instrument was executed in the name and behalf of said corporation by said **Maria Morales Minkel** as its attorney-in-fact, and she acknowledged said instrument to be the free act and deed of said corporation.

I.s.





Dorothy S. Albano
Notary Public, State of Hawaii
My commission expires: 10/28/2009

POWER OF ATTORNEY

Direct Inquiries/Claims to:
THE HARTFORD
 BOND, T-4
 890 ASYLUM AVENUE
 HARTFORD, CONNECTICUT 06115
 call: 888-266-3488 or fax: 860-767-5835
 Agency Code: 61-614256 & 70-700106

KNOW ALL PERSONS BY THESE PRESENTS THAT:

- Hartford Fire Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Casualty Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Accident and Indemnity Company, a corporation duly organized under the laws of the State of Connecticut
- Hartford Underwriters Insurance Company, a corporation duly organized under the laws of the State of Connecticut
- Twin City Fire Insurance Company, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of Illinois, a corporation duly organized under the laws of the State of Illinois
- Hartford Insurance Company of the Midwest, a corporation duly organized under the laws of the State of Indiana
- Hartford Insurance Company of the Southeast, a corporation duly organized under the laws of the State of Florida

having their home office in Hartford, Connecticut, (hereinafter collectively referred to as the "Companies") do hereby make, constitute and appoint, up to the amount of unlimited:

*Harvey C. King, John N. Bustard, Wesley I. Uemoto, Maria Morales Minkel, Kathy Ann McElrath,
 Paul R. Botts, Brad Wagenaar, Dorothy S. Albano, Kim K.L. Barraco*
 of
 Honolulu, HI

their true and lawful Attorney(s)-in-Fact, each in their separate capacity if more than one is named above, to sign its name as surety(ies) only as delineated above by , and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

In Witness Whereof, and as authorized by a Resolution of the Board of Directors of the Companies on July 21, 2003 the Companies have caused these presents to be signed by its Assistant Vice President and its corporate seals to be hereto affixed, duly attested by its Assistant Secretary. Further, pursuant to Resolution of the Board of Directors of the Companies, the Companies hereby unambiguously affirm that they are and will be bound by any mechanically applied signatures applied to this Power of Attorney.



Paul A. Bergenholz

Paul A. Bergenholz, Assistant Secretary

David T. Akers

David T. Akers, Assistant Vice President

STATE OF CONNECTICUT }
 COUNTY OF HARTFORD } ss. Hartford

On this 23rd day of July, 2003, before me personally came David T. Akers, to me known, who being by me duly sworn, did depose and say; that he resides in the County of Hampden, Commonwealth of Massachusetts; that he is the Assistant Vice President of the Companies, the corporations described in and which executed the above instrument; that he knows the seals of the said corporations; that the seals affixed to the said instrument are such corporate seals; that they were so affixed by authority of the Boards of Directors of said corporations and that he signed his name thereto by like authority.



Scott E. Pasala

Scott E. Pasala
 Notary Public
 My Commission Expires October 31, 2007

I, the undersigned, Assistant Vice President of the Companies, DO HEREBY CERTIFY that the above and foregoing is a true and correct copy of the Power of Attorney executed by said Companies, which is still in full force effective as of June 27, 2006

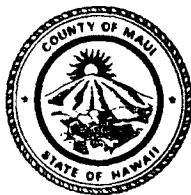
Signed and sealed at the City of Hartford.



Gary W. Stumper

Gary W. Stumper, Assistant Vice President

CHARMAINE TAVARES
Mayor



TAMARA HORCAJO
Director

ZACHARY Z. HELM
Deputy Director

(808) 270-7230
Fax (808) 270-7934

DEPARTMENT OF PARKS & RECREATION

700 Hali'a Nako'a Street, Unit 2, Wailuku, Hawaii 96793

December 17, 2007

MEMO TO: FILE

FROM:  TAMARA HORCAJO, Director

SUBJECT: **E PAEPAE KA PUKO'A SUBDIVISION
TMK (2) 3-8-002:009 & (2) 3-8-001:POR. OF 003
SUBDIVISION FILE NOS. 3.2123 & 3.2177**

This memo confirms our Department's support of the request made by Old Stable LLC for a waiver of the parking and comfort station requirements for the park at the E Paepae Ka Puko'a Subdivision, Paia, Maui, Hawaii. The Department has determined that such improvements are unnecessary for its proposed use as a neighborhood park. Additionally, the applicant has more than satisfied the park assessment requirements and agreements made with the previous administration.

c: Patrick Matsui, Chief of Planning and Development Division

EXHIBIT " 2 "