

MARCOUNCIL OF THE COUNTY OF MAUI

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

March 18, 2016

**Committee  
Report No. \_\_\_\_\_**

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

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on February 16, 2016, makes reference to County Communication 16-5, from the Director of Parks and Recreation, transmitting a proposed resolution, entitled "APPROVING AND AUTHORIZING THE EXECUTION OF A PARK ASSESSMENT AGREEMENT FOR THE KAMALANI SUBDIVISION, PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE," with an attached Park Assessment Agreement.

The purpose of the proposed resolution is to approve the attached Park Assessment Agreement for the Kamalani Subdivision in Kihei, Maui. The developer, Kamalani Ventures LLC, has agreed to satisfy the conditions of Section 18.16.320, Maui County Code, by providing 6.5 acres of land and improvements for park and playground purposes, as a condition of subdivision approval for the development of 94.352 acres. The subdivision is planned for approximately 170 residential workforce housing units and approximately 460 residential market housing units, including both single-family and multifamily structures.

Your Committee notes Section 18.16.320(B)(1), Maui County Code, provides:

- The director of parks and recreation shall require each subdivider, as a condition of approval of a subdivision, to:
- a. Provide land in perpetuity or shall dedicate land for park and playground purposes; or
  - b. Pay the County a sum of money; or

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

Page 2

**Committee**  
**Report No. \_\_\_\_\_**

- c. Provide improvement to a park in the community plan area; or
- d. Provide an equivalent combination thereof, pursuant to subsection C of this section.

Your Committee further notes Section 18.16.320(B)(3), Maui County Code, requires subdividers to “enter into a park assessment agreement with the County,” which is subject to Council approval by resolution.

The Director of Parks and Recreation informed your Committee that under the proposed Park Assessment Agreement, the developer will provide the following:

- 1. Development of two pocket parks comprising a total of 1 acre within the Kamalani Subdivision; and
- 2. A contribution of 5.5 acres and improvements to expand the County’s Hale Piilani Park, which abuts the Kamalani Subdivision.

The Director added the pocket parks will be open to the public, but privately owned and maintained, first by the developer, then by the development’s community association.

Your Committee notes the proposed Park Assessment Agreement requires the developer, in cooperation with the Department, to grade and improve Hale Piilani Park with grass plantings, automatic irrigation, approximately 25 parking stalls, adequate drainage, and a comfort station.

In response to your Committee’s inquiry, the Director explained the pocket parks will be completed first, in phases at a pace consistent with the residential development.

COUNCIL OF THE COUNTY OF MAUI

# ECONOMIC DEVELOPMENT, ENERGY, AGRICULTURE, AND RECREATION COMMITTEE

Page 3

Committee  
Report No. \_\_\_\_\_

Your Committee voted 5-0 to recommend adoption of the proposed resolution and filing of the communication. Committee Chair Guzman, Vice-Chair Cochran, and members Couch, Crivello, and White voted "aye." Committee members Hokama and Victorino were excused.

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

1. That Resolution \_\_\_\_\_, attached hereto, entitled "APPROVING AND AUTHORIZING THE EXECUTION OF A PARK ASSESSMENT AGREEMENT FOR THE KAMALANI SUBDIVISION, PURSUANT TO SECTION 18.16.320, MAUI COUNTY CODE," be ADOPTED; and
2. That County Communication 16-5 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
DON S. GUZMAN, Chair



# Resolution

No. \_\_\_\_\_

APPROVING AND AUTHORIZING THE EXECUTION  
OF A PARK ASSESSMENT AGREEMENT FOR THE  
KAMALANI SUBDIVISION, PURSUANT TO  
SECTION 18.16.320, MAUI COUNTY CODE

WHEREAS, KAMALANI VENTURES LLC ("Subdivider") is developing the Kamalani Subdivision ("Subdivision") situated at Wailuku, Maui, Hawaii; and

WHEREAS, the development of the 94.352 acres in the Kamalani Subdivision is ongoing and has been facilitated through various subdivisions of land; and

WHEREAS, pursuant to Section 18.16.320, Maui County Code ("MCC"), as a condition of subdivision approval, Subdivider is required to provide land in perpetuity or dedicate land for park and playground purposes; and

WHEREAS, Subdivider and the Department of Parks and Recreation ("Parks") hope and desire to enter into the Park Assessment Agreement for Kamalani Subdivision ("Agreement"), attached hereto as Exhibit "1", and by reference made a part hereof; and

WHEREAS, dedication of the park shall be consistent with the terms contained in the Agreement; and

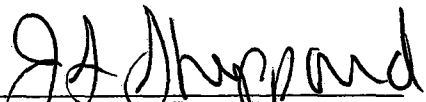
WHEREAS, Section 3.44.015(F), MCC, authorizes the Director of Parks and Recreation to accept conveyance of real property when the conveyance is made in accordance with a park assessment agreement approved by Council resolution pursuant to Section 18.16.320, MCC; now, therefore,

**Resolution No. \_\_\_\_\_**

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

1. That it approves the Agreement; and
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 Agreement; 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 Subdivider.

APPROVED AS TO FORM  
AND LEGALITY:

  
\_\_\_\_\_  
JERRIE SHEPPARD  
Deputy Corporation Counsel  
County of Maui  
2015-4514

---

Return by Mail  Pickup

To:

---

TITLE OF DOCUMENT:

PARK ASSESSMENT AGREEMENT  
FOR  
[KAMALANI]

---

PARTIES TO DOCUMENT:

DEVELOPER: KAMALANI VENTURES LLC, a Hawaii limited liability company  
c/o 822 Bishop Street  
Honolulu, Hawaii 96813

COUNTY: COUNTY OF MAUI, a political subdivision of the State of Hawaii  
200 South High Street  
Wailuku, Maui, Hawaii 96793

---

TAX MAP KEY NO.: (2) 3-8-004-030

(This document consists of \_\_\_\_\_ pages.)

EXHIBIT " 1 "

PARK ASSESSMENT AGREEMENT  
FOR  
[KAMALANI]

THIS PARK ASSESSMENT AGREEMENT (this "Agreement") is executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_, by and between KAMALANI VENTURES LLC, a Hawaii limited liability company, whose address is c/o 822 Bishop Street, Honolulu, Hawaii 96813 ("Developer"), and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 ("County"), hereinafter collectively referred to as ("Parties").

WHEREAS, Developer owns that certain parcel of land located at Pulehunui, Kihei, District of Wailuku, Island and County of Maui, being Lot 5 of the "Pulehunui Plains Subdivision," identified by Tax Map Key No. (2) 3-8-004:030 with an area of approximately 94.352 acres as described and depicted in Exhibit A attached hereto and incorporated herein (the "Land");

WHEREAS, by Findings of Fact, Conclusions of Law, and Decision and Order, entered February 20, 2009, in Docket No. A07-772, the Land Use Commission of the State of Hawaii reclassified the Land from State Land Use Agricultural District to State Land Use Urban District;

WHEREAS, pursuant to such reclassification, Developer's predecessor entered into that certain Declaration of Conditions dated April 3, 2009, recorded in the Bureau of Conveyances of the State of Hawaii (the "Bureau") as Document No. 2009-051059 (the "Declaration");

WHEREAS, the Declaration requires Developer to comply with the County of Maui park dedication requirements under such terms as may be approved by the Director of Parks and Recreation (the "Director");

WHEREAS, the Developer intends to subdivide the Land and construct residential dwelling units thereon, in a development which has been named Kamalani ("Kamalani"), which development is subject to County's park assessment requirements under Section 18.16.320, Maui County Code ("MCC"); and

WHEREAS, County and Developer seek to establish the details of their agreement to satisfy Developer's park assessment requirements for the Development (defined below), and upon satisfaction of the terms and conditions of this Agreement, County agrees that Developer will have fully satisfied its park assessment requirements for said Development pursuant to Section 18.16.320 MCC;



NOW, THEREFORE, the Parties hereby agree as follows:

1. Park Assessment Requirements

a. Number of Units. Kamalani is to be located on the Land and is currently intended to be comprised of approximately 170 residential work force housing units and approximately 460 residential market housing units, single family and multi-family, to be developed in increments over time (the "Development"). Developer has reserved the right to add and annex additional land in the vicinity of the Land to the Development, in which case, the Development shall refer to the Land (as described above) and such additional lands that are so annexed.

b. Calculation of Park Assessment Requirement. Based upon the unit count outlined in Paragraph 1(a), Developer is required to provide approximately 6.22 acres of improved park area.

c. Land Area: Pocket Parks. Developer intends to provide two (2) pocket parks (the "Pocket Parks"), the combined area of which is approximately one (1) acre, in the locations approximately as shown on Exhibit B attached hereto and made a part hereof. The Pocket Parks will be privately owned and maintained by the Developer or its successors and assigns. The Pocket Parks will be open to the public, and subject to reasonable rules and regulations adopted by Developer or its successors and assigns, as amended from time to time. The use of the Pocket Parks will be restricted to park and playground purposes by recorded, perpetual covenants that will be enforceable by Developer, County, and their respective successors and assigns (a "Unilateral Agreement").

The perpetual maintenance of the Pocket Parks by Developer, its successor and assigns shall be assured by the Unilateral Agreement, which shall obligate Developer, its successors and assigns to maintain the Pocket Parks in perpetuity, and which shall empower County to enforce the Unilateral Agreement or to cause the maintenance of the Pocket Parks and seek reimbursement of all costs by any and all means available in the event of a default in said Unilateral Agreement that continues after notice of default and a reasonable opportunity to cure such default. Upon completion of each Pocket Park, Developer shall execute and record a Unilateral Agreement in favor of County to assure that such Pocket Park shall be privately and adequately maintained in perpetuity, and that the provisions of this section shall be observed.

d. Land Area: Neighborhood Park. Developer intends to provide a neighborhood park (the "Neighborhood Park"), the area of which is approximately 5.5 acres, in the location approximately as shown on Exhibit B attached hereto and made a part hereof, adjacent to the

existing County Hale Piilani Park. Upon completion of park improvements to the reasonable satisfaction of the Director, the Director shall accept dedication of the Neighborhood Park.

- e. Credits. Developer is not requesting park credits.
- f. Map. A map showing the location of the Pocket Parks and Neighborhood Park in relation to the surrounding area is attached hereto and made a part hereof as Exhibit C.
- g. Improvements. The Pocket Parks will be graded and improved with grass planting, automatic irrigation, and adequate drainage. The Neighborhood Park will be graded and improved with grass planting, automatic irrigation, approximately 25 parking stalls, adequate drainage, and a comfort station, in accordance with plans reflecting the mutual agreement and cooperation of the parties.
- h. Estimated Completion Date. Pocket Park Number 1 will be completed prior to the completion of construction activity in Increment 2 of the Project. Pocket Park Number 2 and the Neighborhood Park will be completed prior to the completion of construction activity in Increment 3 of the Project.
- i. Proposed Uses of Park. The Pocket Parks may be used for passive recreation. The Neighborhood Park will be dedicated to County for active recreation purposes.
- j. Conceptual Rendering. Conceptual renderings of the Neighborhood Park and Pocket Parks are attached hereto and made a part hereof as Exhibits D, E, and F.
- k. Dedication. The Neighborhood Park site shall be accepted by the Director of Parks and Recreation in accordance with Section 3.44.015 (F), Maui County Code.
- l. Term of Agreement. This Agreement shall commence upon execution and shall terminate upon completion of the Pocket Parks, acceptance of dedication of the Neighborhood Park, and satisfaction of additional park requirements (if any) required by Paragraph 3 below, whereupon all requirements of Section 18.16.320, Maui County Code shall be deemed satisfied, and County shall, upon the request of Developer, promptly execute and record a release of this Agreement.

2. Approvals Prior to Completion of Park Improvements. Due to the long, fairly narrow configuration of the Land and the plans for construction of the Development in increments, it is possible that completion of the improvements to the Pocket Parks and dedication of the Neighborhood Park will not occur prior to the time building permits are issued for some units in the Development. In such an event, Developer may issue a letter of credit, surety bond, or other security in an amount equal to the parks dedication fee that would be payable for each unit for which a building permit is sought. Based on the issuance of such a letter of credit, bond, or other security, County will sign off on such building

permits. The letter of credit, bond or other security will be released once the Neighborhood Park has been completed, which completion shall be defined as the expiration of the 45-day period after filing with the Second Circuit Court of the State of Hawaii the published contractor Notice of Completion. County reserves the right to exercise its rights under the letter of credit, bond, or other security should the Neighborhood Park not be completed within two (2) years after the issuance of all building permits.

3. Adjustments. Developer shall inform County once the Development has been completed. At that time, to the extent there are any lands in the Development that are dedicated or provided for park and playground purposes in excess of what is required to be dedicated or provided pursuant to Section 18.16.320, Maui County Code, for this Development, County agrees that such areas may be used as credits for other projects, with the approval of the Director. To the extent the final Development results in the combined area of the Pocket Parks and Neighborhood Park not being sufficient to satisfy the requirements of Section 18.16.320, Maui County Code, Developer shall satisfy its park dedication requirements by complying with Section 18.16.320(B)(1). Any park assessment fees which may be payable to satisfy this requirement shall be payable at the assessment rate existing at the time of execution of this Agreement.

4. Verification of Compliance. County agrees, upon the written request of Developer, to provide such written verification of Developer's compliance with this Agreement as Developer or its prospective or existing lenders or development partners may reasonably request.

5. Notifications: All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered by personal delivery or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the following address, or to such other address as the party to be notified shall have specified most recently by like notice:

If to County, then to:  
Director, Department of Parks and Recreation  
County of Maui  
700 Halia Nakoia Street, #2  
Wailuku, Hawaii 96793

If to Developer, then to:  
Kamalani Ventures, LLC  
c/o 822 Bishop Street  
Honolulu, Hawaii 96813

cc: Kamalani Ventures, LLC  
c/o A&B Properties, Inc.  
11 Puunene Avenue  
Kahului, Hawaii 96732

Notices given as provided in this Section shall be deemed given on delivery or upon receipt if by personal delivery. Any notice may be sent on behalf of either party by such party's counsel.

6. Attorneys' Fees. In the event that any party brings an action or proceeding against any other party to enforce or to prevent the breach of any provision of this Agreement or for damages by reason of any breach of this Agreement, or for any other judicial or administrative remedy, then the prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses.

7. Severability. In any provision of this Agreement or the application hereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected hereby.

8. Recordation. Developer shall record this Agreement with the Bureau of Conveyances of the State of Hawaii after execution by Developer and County. Upon recordation of this Agreement, the conditions imposed in this Agreement shall run with the Land and shall constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who claim an interest in the Land. Upon further subdivision of the Land or other legal division of ownership thereof, such as by creation of a condominium property regime, such that the Pocket Parks and/or Neighborhood Park become separate legal lots or units of ownership, it is intended that this Agreement shall constitute an encumbrance only on the legal lot or unit of ownership in which the Pocket Parks and the Neighborhood Park are a part, and not on any other parcel of land or unit. This Agreement shall be enforceable by County by appropriate action at law or suit in equity, against Developer and its successors and assigns.

9. Entire Agreement; Amendment. This Agreement shall, upon approval of the same by the Maui County Council and execution by Parties, be binding upon the Parties hereto, notwithstanding the subsequent enactment by County of a law of general application that conflicts with this Agreement. This Agreement and the attachments hereto contain the entire agreement of the Parties with respect to said Agreement, and shall supersede all negotiations, agreements, and understanding with respect thereto. This Agreement may only be amended by written agreement approved by Maui County Council resolution.

10. Governing Law. This Agreement and the rights and obligations of Developer and County shall be interpreted in accordance with the laws of the State of Hawaii and any applicable federal law. The venue for any action with respect to this Agreement shall be in Wailuku, Maui, Hawaii.

11. Counterparts. The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute on and the same agreement, binding all Parties hereto, notwithstanding all of the Parties are not signatory to the original or same counterparts. For all purposes, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages may be assembled as one document.

*[End of Agreement; Signatures on Next Page]*

IN WITNESS WHEREOF, Developer and the County have executed this Agreement as of the day and year first above written.

**KAMALANI VENTURES LLC**

By A&B Properties, Inc.

Its Manager

By Shaun Yu Chiu  
Its Vice President

By [Signature]  
Its Vice President

**COUNTY OF MAUI**

By \_\_\_\_\_  
ALAN M. ARAKAWA  
Its Mayor

**RECOMMENDED APPROVAL:**

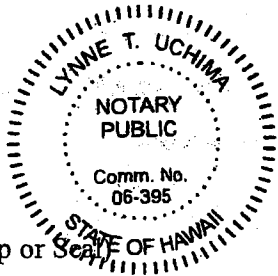
[Signature]  
BUTCH KAALA BUENCONSEJO  
Director of Parks and Recreation

**APPROVED AS TO FORM  
AND LEGALITY:**

[Signature]  
JERRIE L. SHEPPARD  
Deputy Corporation Counsel  
County of Maui

STATE OF HAWAII )  
 )  
COUNTY OF MAUI ) SS:

On this 30<sup>th</sup> day of October, 2015, before me personally appeared **GRANT Y. M. CHUN and RANDALL H. ENDO**, to me personally known, who, being by me duly sworn or affirmed, did say that such persons executed the foregoing instrument as the free act and deed of such persons, and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.



(Official Stamp or Seal)

*Lynne T. Uchima*

Name: Lynne T. Uchima  
Notary Public, State of Hawaii  
My commission expires: 7/2/2018

**NOTARY CERTIFICATION STATEMENT**

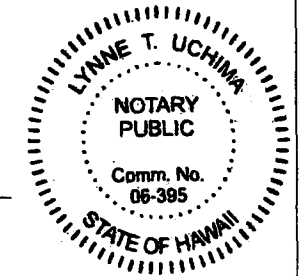
Document Identification or Description: Park Assessment Agreement for [Kamalani]

Doc. Date: \_\_\_\_\_ or  Undated at time of notarization.

No. of Pages: 16 Jurisdiction: Second Circuit  
(in which notarial act is performed)

*Lynne T. Uchima* 10/30/15  
Signature of Notary Date of Notarization and  
Certification Statement

Lynne T. Uchima  
Printed Name of Notary



(Official Stamp or Seal)

STATE OF HAWAII )  
 ) SS:  
COUNTY OF MAUI )

On this \_\_\_\_\_ day of \_\_\_\_\_, before me appeared ALAN M. ARAKAWA, to me personally known, who being by me duly sworn did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawaii, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of said County of Maui by authority of its Charter; and the said ALAN M. ARAKAWA acknowledged the said instrument to be the free act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, State of Hawaii

My commission expires: \_\_\_\_\_

(Official Stamp or Seal)

**NOTARY CERTIFICATION STATEMENT**

Document Identification or Description: Park Assessment Agreement for [Kamalani]

Doc. Date: \_\_\_\_\_ or  Undated at time of notarization.

No. of Pages: \_\_\_\_\_ Jurisdiction: \_\_\_\_\_ Circuit  
(in which notarial act is performed)

\_\_\_\_\_  
Signature of Notary

\_\_\_\_\_  
Date of Notarization and  
Certification Statement

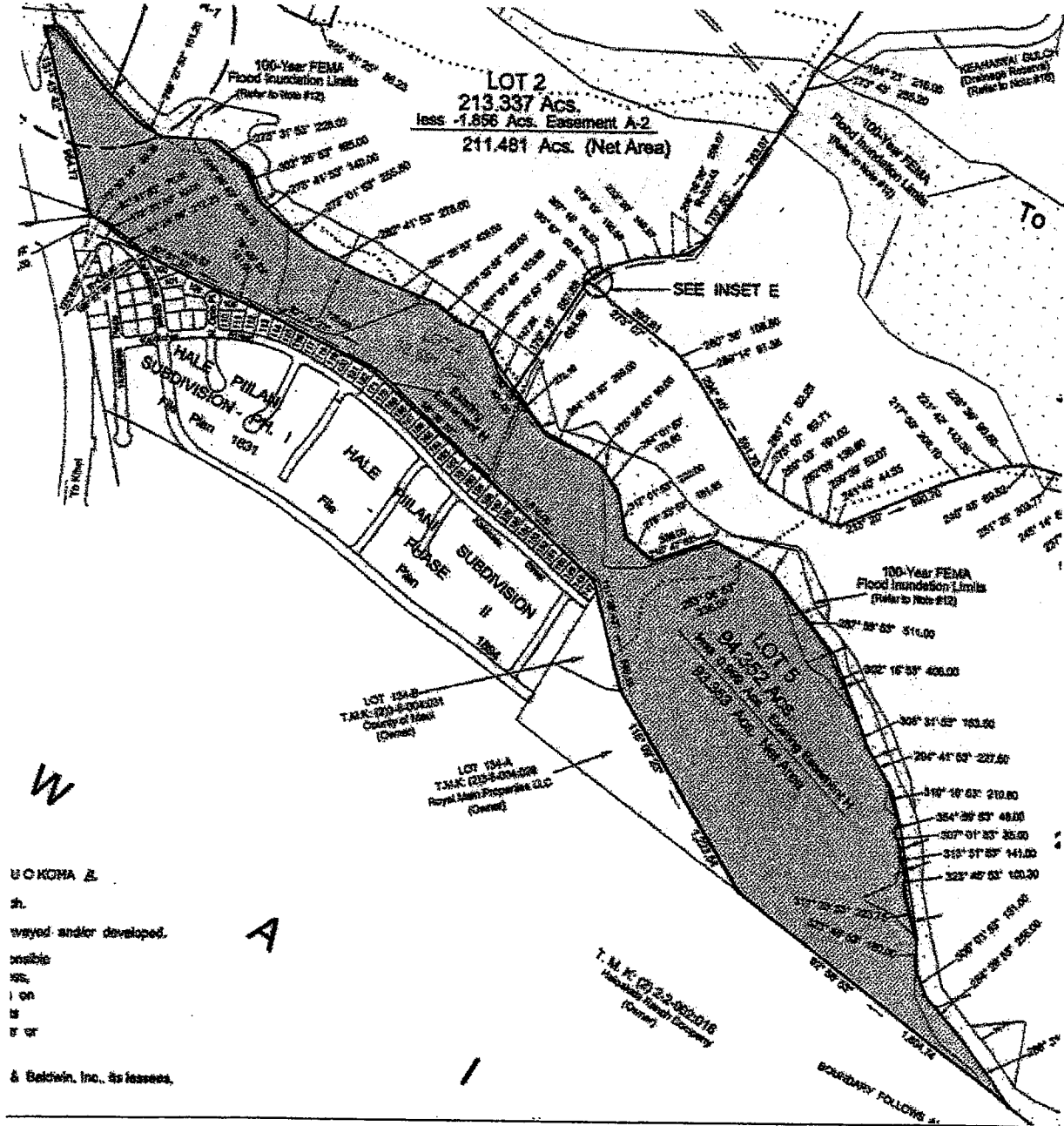
\_\_\_\_\_  
Printed Name of Notary

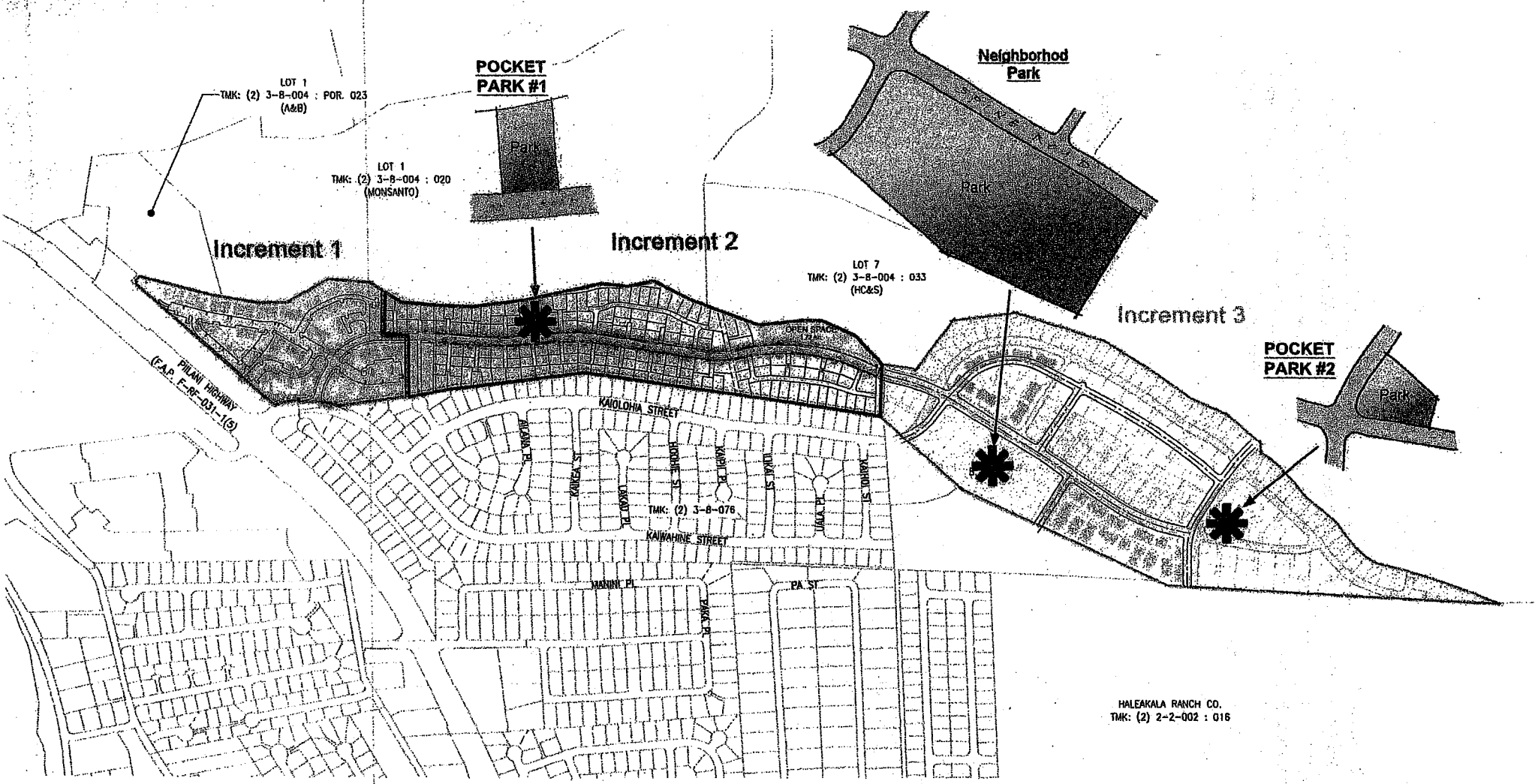
(Official Stamp or  
Seal)



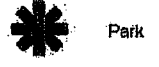
Exhibit A

All of that certain parcel of land (being a portion of Land Patent 8140, Land Commission Award 5230 to Keaweamahe) situate, lying and being situate at Pulehunui, Kihei, Wailuku, Maui, Hawaii, being Lot 5 of the "Pulehunui Plains Subdivision," and thus bounded and described in that certain Affidavit of Justin R. Shaw (Licensed Professional Land Surveyor, Certificate No. LS-15959) dated March 5, 2015, recorded in the Bureau as Document No. A-55460707 and as shown on the Subdivision Map (Pulehunui Plains Subdivision (County of Maui Subdivision File No. 3.2221)) attached to Affidavit of Ken T. Nomura dated July 10, 2012, recorded in the Bureau as Document No. A-45760643) as follows:



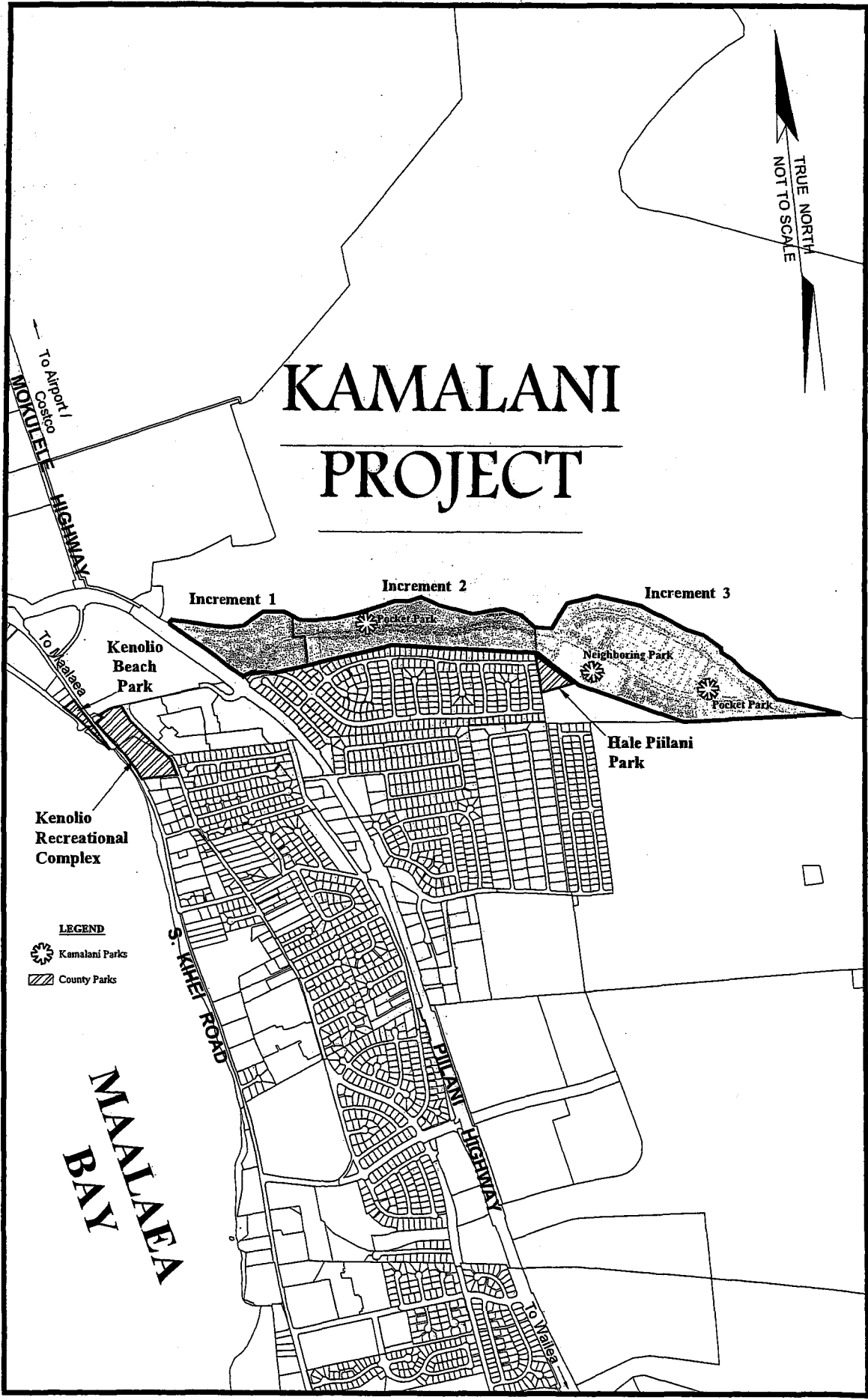


**LEGEND**



**KAMALANI CONCEPTUAL PARKS PLAN**

EXHIBIT B



# KAMALANI PROJECT

Increment 1      Increment 2      Increment 3

**LEGEND**  
Kamalani Parks  
County Parks

**MAAIALAEA BAY**

TRUE NORTH  
NOT TO SCALE

To Airport /  
Coesbo  
**MOKUIELE HIGHWAY**

Kenolio Beach Park

Kenolio Recreational Complex

**S. KIHET ROAD**

**HALE PIILANI HIGHWAY**

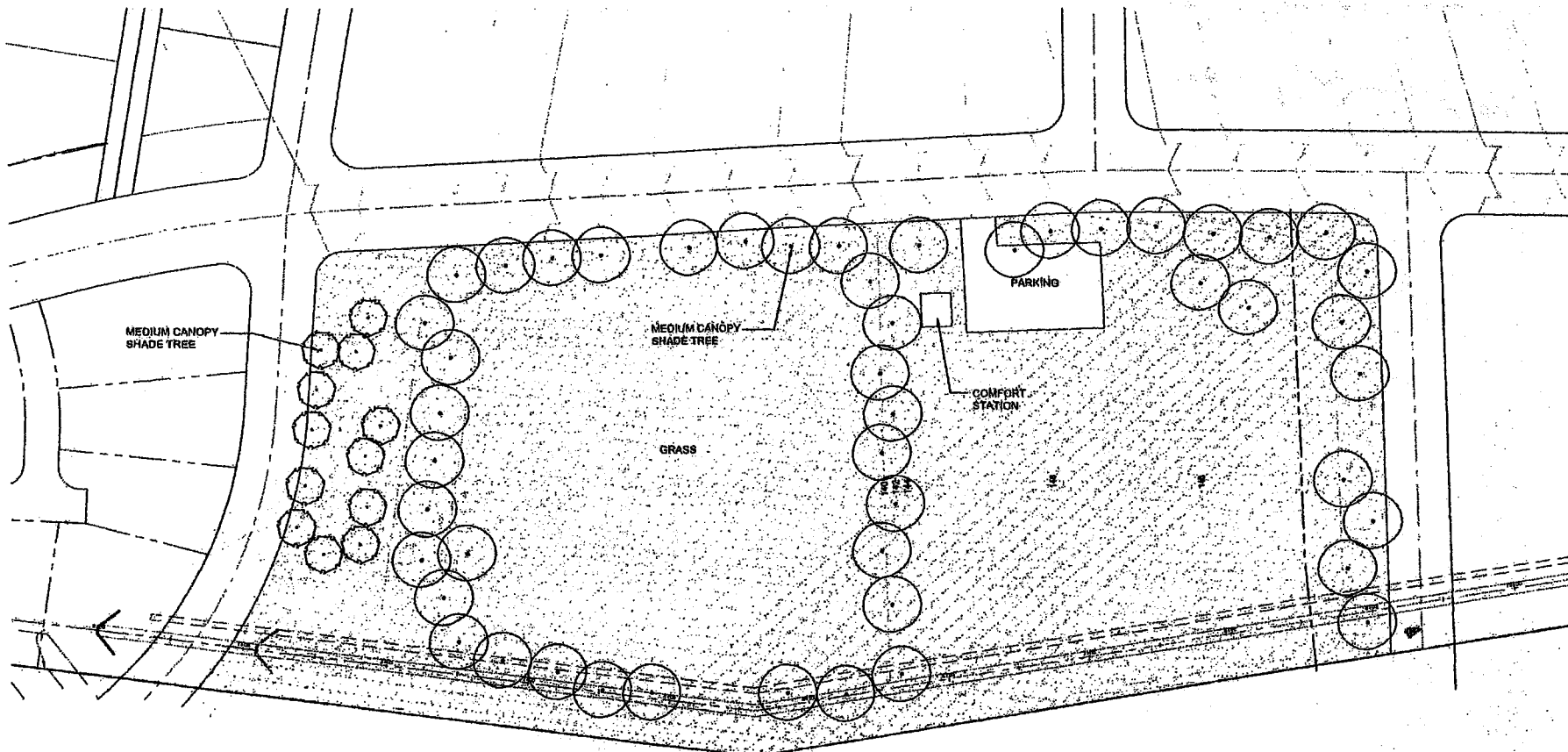
Hale Piilani Park

Neighboring Park

Pocket Park

Pocket Park

To Maaialaea



MEDIUM CANOPY SHADE TREE

MEDIUM CANOPY SHADE TREE

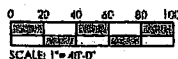
PARKING

COMFORT STATION

GRASS



**PUBLIC PARK PLAN**  
SCALE: 1" = 40'-0"



**"Exhibit D - Neighborhood Park"**

	Landscape Architecture Site Planning Irrigation Consultants		City Planner Civil Engineer Surveyor Professional No. 1087 Exp. 12/31
	<b>BROWNIE &amp; LEE</b>		
KAMALANI (a.k.a. KIHAI RESIDENTIAL SUBDIVISION)			
KIHAI, MAUI, HAWAII			
<b>PUBLIC PARK PLAN - 1</b>			
DESIGNED BY: RB		CHECKED BY: JEB/AOT	
DRAWN BY: RB		DATE: 11/11/11	
APPROVED:		SUBMITTED BY:	

DWG. NO. PP-101  
SHEET OF 36

DATE: 11/11/11  
LINE IS 2 INCHES AT FINAL SIZE  
(IF NOT SHOWN, SEE DETAILING)



