

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

June 3, 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 May 17, 2016, makes reference to County Communication 16-68, from the Director of Parks and Recreation, transmitting a proposed bill, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES, RELATIVE TO THE OPERATION, USE AND MAINTENANCE OF THE CENTRAL MAUI REGIONAL SPORTS COMPLEX," and a proposed Memorandum of Agreement attached as an exhibit.

The purpose of the proposed bill is to authorize the Mayor to execute the proposed agreement with the State Board of Land and Natural Resources for the operation, maintenance, and use of the completed portions of the Central Maui Regional Sports Complex.

Your Committee notes Section 2.20.020, Maui County Code, states "unless authorized by ordinance, the mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof."

Your Committee notes the State of Hawaii, through its Department of Land and Natural Resources, is constructing the complex in four phases on 65.378 acres owned by the State and located along Kuihelani Highway, west of Pomaikai Elementary School, and south of several Maui Lani residential areas in Wailuku. The property is to be set aside to the County by Executive Order of the Governor of the State of Hawaii when construction is completed.

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A representative of DLNR's Parks Division stated the project is the result of collaboration among State and County agencies to provide recreational venues. He said the proposed agreement reflects negotiations between DLNR and the County Department of Parks and Recreation to establish their respective roles and responsibilities.

The Director of Parks and Recreation informed your Committee construction of Phase I of the complex was completed in March 2016, and the community has used the complex since that time for various sports practices, softball games, and walking paths.

Your Committee notes Phase I consists of 24 acres with a multipurpose field, two softball fields, two comfort stations, a concession stand, 200 parking stalls, landscaping, an irrigation well, and a water-storage tank.

A Deputy Corporation Counsel said the County has had access to Phase I through a temporary right-of-entry permit, set to expire on June 30, 2016, that requires the County to assume maintenance responsibilities.

Your Committee notes the right-of-entry was executed by the Mayor on behalf of the County pursuant to Ordinance 4296, effective March 4, 2016.

Your Committee expressed concern about the extent of the County's obligations and liabilities under the proposed agreement, including potential County responsibility for pending litigation in State court relating to the complex in Maui Lani Neighbors, Inc. v. State of Hawaii Department of Land and Natural Resources, et al., Civil 14-1-0501(2), and the ability of streets within residential neighborhoods of Maui Lani to handle additional traffic arising from activities at the complex.

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A Deputy Corporation Counsel informed your Committee the agreement contains mutual indemnification provisions, so that the State would be responsible for damages or injury caused by its employees and the County for damages or injuries by County employees.

The Deputy Corporation Council further advised the agreement would not obligate the County to build any part of the complex. In addition, the agreement would terminate upon issuance of the Executive Order setting aside the property to the County or upon 30 days' notice by either party.

A representative of DLNR's Land Division said all of the plaintiffs' claims in the litigation had been dismissed at the trial level, and the State would be responsible for defending any appeal. He stated the State has made some efforts to mitigate concerns regarding potential noise and nighttime light pollution.

The Director said he anticipates traffic congestion will be mitigated by an additional access road and traffic light at Kuihelani Highway that will be constructed by A&B Properties, Inc., in connection with its development of the adjoining Waiale master-planned community.

Upon inquiry by your Committee, the Director said the County's current maintenance of the area entails visits by several staff members three times per week to care for the fields, comfort stations, and concession stands, and approximately \$630 per month in utility costs. Following complete construction, the County's labor costs and utility costs would rise in proportion to the increased size and use of the complex.

A representative of DLNR's Engineering Division said water is provided at no cost from a State well at the complex; however, the County would be required to pay for maintenance of the water system. The representative said the well's water yield is beyond the anticipated needs of the completed complex.

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The representative of DLNR's Parks Division noted the State has appropriated more than \$31 million for the complex. The possibility of future State funding for various possible amenities will be dependent on future appropriations by the State Legislature.

Your Committee expressed support for the complex and appreciation to the State for its contribution to the enhancement of County residents' recreational opportunities.

Your Committee notes passage of the proposed bill is consistent with the Maui County General Plan, including the following objective found at page 64 of the Countywide Policy Plan: "Expand access to recreational opportunities and community facilities to meet the present and future needs of residents of all ages and physical abilities."

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

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

1. That Bill _____ (2016), attached hereto, entitled "A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES, RELATIVE TO THE OPERATION, USE AND MAINTENANCE OF THE CENTRAL MAUI REGIONAL SPORTS COMPLEX," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 16-68 be FILED.

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



DON S. GUZMAN, Chair

ear:cr:16054aa:scb

ORDINANCE NO. _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE AUTHORIZING THE MAYOR OF THE COUNTY OF MAUI TO ENTER INTO AN INTERGOVERNMENTAL AGREEMENT WITH THE STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES, RELATIVE TO THE OPERATION, USE AND MAINTENANCE OF THE CENTRAL MAUI REGIONAL SPORTS COMPLEX

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

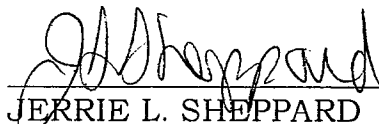
SECTION 1. Purpose. The State of Hawaii, through its Department of Land and Natural Resources, is constructing the Central Maui Regional Sports Complex in Waikapu, Wailuku, Maui, Hawaii, in phases. Construction is forecast to continue through 2017, but completed phases will be user-ready prior to completion of construction. The State and County desire to allow public use of completed phases of the Complex while construction continues on adjacent phases. A Right of Entry allowing use of Phase 1 will expire June 30, 2016. In order to allow continued public use of Phase 1 and other phases of the Complex as they are completed, while the State's construction continues on future Phases, a Memorandum of Agreement ("Agreement") between the State of Hawaii Board of Land and Natural Resources and the County of Maui, Department of Parks and Recreation, is attached hereto and incorporated herein by reference as Exhibit "1."

Section 2.20.020, Maui County Code, provides that, unless authorized by ordinance, the Mayor shall not enter into any intergovernmental agreement or any amendment thereto which places a financial obligation upon the county or any department or agency thereof.

SECTION 2. Council authorization. Pursuant to Section 2.20.020, Maui County Code, the Council of the County of Maui hereby authorizes the Mayor to execute the Agreement, all other necessary documents relating to the Agreement, and any amendments thereto.

SECTION 3. Effective date. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



JERRIE L. SHEPPARD
Deputy Corporation Counsel
County of Maui
(LF 2015-5085)

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

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

I. INTRODUCTION

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

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

II. TERMS

A. Completion of the Complex

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

EXHIBIT " 1 "

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

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

1. The Parties agree that the County may enter the completed phases of the Complex and use the completed areas as set forth in this Agreement. DLNR will coordinate with the County for installation of further improvements to Phase 1 so as to ensure use and improvement installations do not conflict.

2. The County shall have the option of using completed facilities in Phases 2 through 4 prior to completion of the respective phases and will be responsible for maintaining such completed phases as set forth in this Agreement.

3. The County shall assume all maintenance responsibilities for any Phase upon commencement of the County's use of the Phase, including but not limited to: Turf and field areas, drainage swales and areas, comfort station cleaning and maintenance, parking and pathway clearing and cleaning, all completed landscaping, irrigation system operation and maintenance, and other facilities.

4. The County shall assume utility costs along with other responsibilities for the completed phases of the Complex unless determined otherwise by written agreement between the Parties. The County shall assume potable water charges in the completed phases.

5. The Parties agree that the County will have full use of the State's irrigation water source, the well and reservoir and appurtenant areas for the operation and maintenance of the turf, field and landscaped areas in the Complex, without any charges for the water usage in return for the County's operation and maintenance of this irrigation water system. The State's irrigation water source, well, and reservoir shall be used by the County solely for irrigation and other water needs of the Complex. Nothing in this Agreement shall be interpreted to limit the State from using water from the State's irrigation water source, well, and reservoir for any purpose, as long as the Complex has sufficient water.

6. The State and County shall coordinate on any unforeseen issues not directly stated in this Agreement as they relate to the development, operation and management of the Complex.

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

C. Administration of the Agreement

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

D. Agreement Period

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

E. Transfer of the Completed Complex to the County

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

F. Right of Entry


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

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


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

BOARD OF LAND AND NATURAL RESOURCES:

Date MAR 29 2016

By 
SUZANNE D. CASE
Its Chairperson

APPROVED AS TO FORM:


Deputy Attorney General


Date 3/29/16

COUNTY OF MAUI:

Date _____

By _____
ALAN ARAKAWA
Its Mayor

APPROVAL RECOMMENDED:


BUTCH KAALA BUENCONSEJO
Director, Department of Parks
and Recreation

APPROVED AS TO FORM
AND LEGALITY:


JERRIE L. SHEPPARD
Deputy Corporation Counsel

Exhibit A

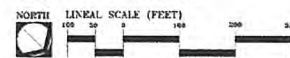


Central Maui Regional Sports Complex

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

CENTRAL MAUI REGIONAL SPORTS COMPLEX

PREPARED BY PBR HAWAII



August 18, 2015



Exhibit B

Central Maui Regional Sports Complex: Project Timeframes

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

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

Exhibit C

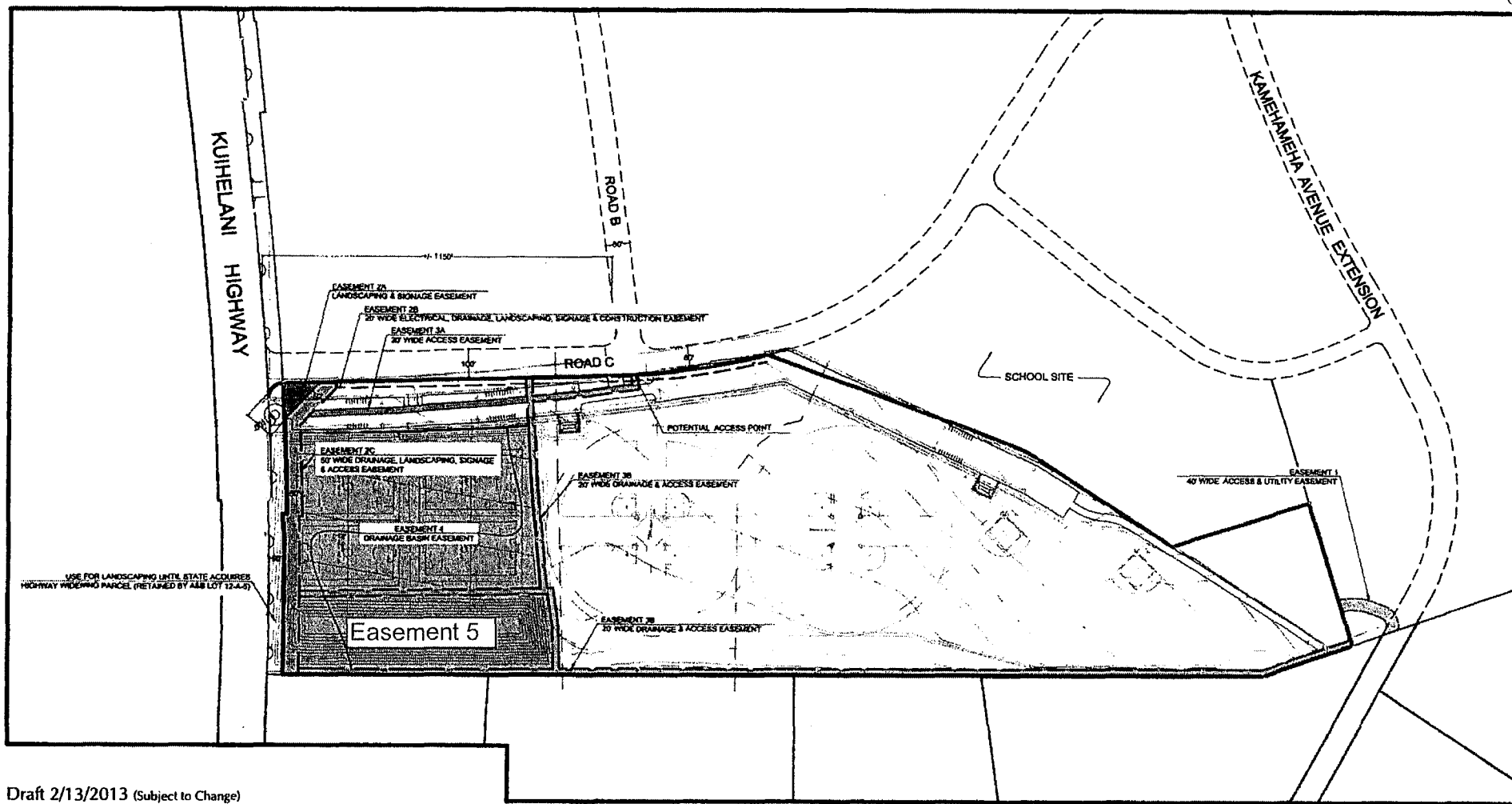
Easement	Description	Status
Easement 1	40-foot wide access & utility easement provides vehicle and utility access to S. Kamehameha Ave to A&B's boundary at Wai`ale: easement in favor of the State for access and utility, easement is permanent. This easement currently exists and runs with the Pomaikai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

Exhibit C

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

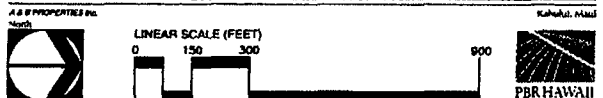
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Exhibit C



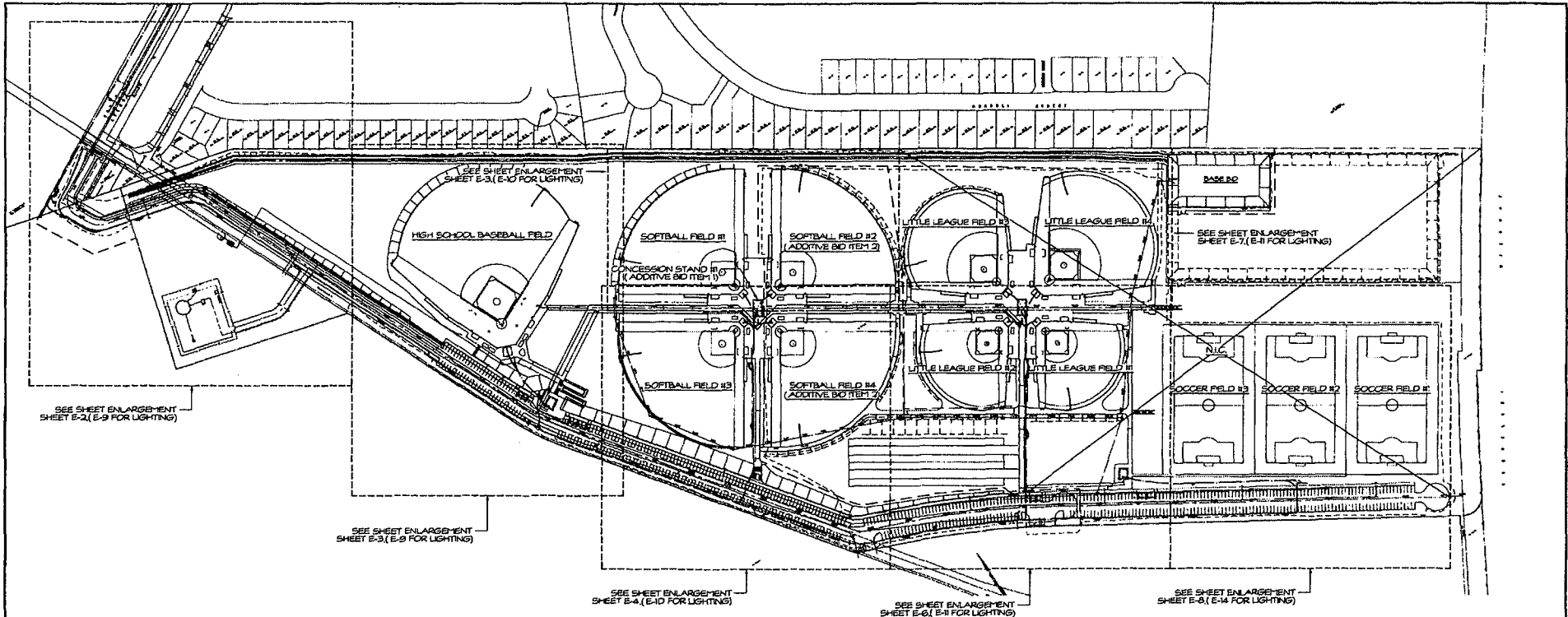
Draft 2/13/2013 (Subject to Change)

Exhibit C



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

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



ELECTRICAL SITE PLAN
SCALE 1" = 120'-0"

COUNTY OF MAUI
MAUI COUNTY CODE, CHAPTER 16.56A ENERGY CODE

TO THE BEST OF MY KNOWLEDGE, THIS PROJECT'S DESIGN SUBSTANTIALLY CONFORMS TO THE ENERGY CODE FOR:

BUILDING COMPONENT SYSTEMS
 ELECTRICAL COMPONENT SYSTEMS
 MECHANICAL COMPONENT SYSTEMS

SIGNATURE: *[Signature]* DATE: 09/27/13
 NAME: DON H. SUZUKI
 TITLE: PRINCIPAL
 LICENSE NO.: 9006-E

MAUI COUNTY CODE CHAPTER 20.35
OUTDOOR LIGHTING

THE ELECTRICAL OUTDOOR LIGHTING SYSTEM AND EQUIPMENT HAVE BEEN REVIEWED BY ME AND TO THE BEST OF MY KNOWLEDGE, THIS DESIGN SUBSTANTIALLY CONFORMS TO THE REQUIREMENTS SPECIFIED IN MAUI COUNTY CODE CHAPTER 20.35 OUTDOOR LIGHTING

SIGNATURE: *[Signature]*
 NAME: DON H. SUZUKI
 PRINTED NAME: DON H. SUZUKI
 TITLE: PRINCIPAL
 LICENSE NO.: 9006-E

DRAFT

REVISION NO.	DATE	DESCRIPTION	BY	DATE	APPROVED

DON H. SUZUKI
LICENSED PROFESSIONAL ENGINEER
NO. 9006-E
MAUI, HAWAII

WE HAVE BEEN ADVISED BY THE CLIENT THAT THIS PROJECT IS A PART OF THE PROJECT.

SIGNATURE: *[Signature]*
 NAME: DON H. SUZUKI
 TITLE: PRINCIPAL
 LICENSE NO.: 9006-E

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
ENGINEERING DIVISION

CENTRAL MAUI REGIONAL SPORTS COMPLEX
PHASE I
WAILUKU, MAUI, HAWAII

ELECTRICAL SITE PLAN, NOTES, & DETAILS

DESIGNED: D.S.
 DRAWN: K.N./E.S.
 CHECKED: D.S.

SUBMITTED: -- --
 DATE: OCTOBER 2013
 SCALE: AS NOTED

APPROVED: *[Signature]*
R. M. TOWELL CORPORATION
 ENR ENGINEERS

JAN 31 2014
 DATE

DRAWING NO. E-1