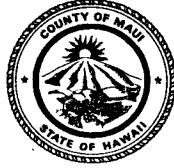


ALAN M. ARAKAWA
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740
FAX: (808) 270-7152

April 13, 2004

KUAU BAYVIEW AT PAIA HOMEOWNERS' ASSOCIATION
P.O. Box 792175
Paia, Hi. 96779-2175

Attention: Ms. Anne Pitcaithley
President

Subject: **LOT 25, MAKANA SUBDIVISION; 26,515 SQUARE FEET; TMK (2)
2-5-013:025**

Dear Association:

First our apologies for not sooner responding to your request and inquiry as set forth in the July 24, 2003 letter to Mr. Glenn Correa, Director of the Department of Parks and Recreation, County of Maui (copy attached hereto as Exhibit "1"). However, a review of the applicable records and documents, discussions with the departmental staff, and a recent site inspection became necessary.

As taken from your July 24, 2003 letter, and phone discussions with Ms. Darlene Brothers and Ms. Pitcaithley, we understand your requests/concerns are as follows:

1) That as the County of Maui ("County") is the record owner of Lot 25 (the "County Park Parcel"), the County is subject to and responsible to pay your association's maintenance fees, which by your calculation, amounted to \$ 1,980 as of December 2003; and

2) That as the County Park Parcel adjoins the Paia-direction boundary of Lot 94, TMK(2) 2-5-013:094, area of 71,121 square feet (the "Retention Basin Parcel"), the County should and is responsible to repair and maintain the existing fence that separates the subject parcels.

For reference, attached hereto as Exhibit "2" is a copy of a tax key map which identifies both parcels: County Park Parcel outlined in yellow, and Retention Basin Parcel outlined in pink.

I) COUNTY PARK PARCEL

Our review reveals that the subject County Park Parcel was conveyed to the County as a condition and requirement of the granting and approval of the Makana Subdivision, pursuant to and in accordance with Section 18.16.320 of the Maui County Code ("MCC"), a copy of said MCC section being attached hereto as Exhibit "3". Relevant portions of said MCC section required:

"B. Park dedication requirements.

1. 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 parks and playground purposes; or

2. The land provided or dedicated shall meet the following standards:

a. Each subdivider shall convey the land to the County by warranty deed free and clear of any liens or encumbrances; . . .

b. . . .

c. . . .

d. The land provided or dedicated shall be subject to acceptance by council resolution"
(emphasis added)

Based on the above requirements, attached hereto as Exhibit "4" is a copy of Maui County Council Resolution No. 97-33 adopted on February 21, 1997, entitled "Accepting Land Dedicated for Park and Playground Purposes Pursuant to Section 18.16.320, Maui County Code", which Resolution accepted the subject County Park Parcel pursuant to the subdivision requirements. Attached to the Resolution as Exhibit "A" is a copy of the Warranty Deed, dated January 18, 1996, from A&B Properties, Inc., as Grantor, to the County, as Grantee, which document conveyed free and clear title to the County Park Parcel to the County. As noted, there is no mention, reference and/or stated condition or encumbrance, in either the body of the Warranty Deed or the attached description of the property, that the conveyance or the subject property was or is to be subject to future homeowners' association jurisdiction, control and/or fees, costs and expenses.

To the best of this office's knowledge and information, and in accordance with the Maui County Code, the County has not and will not accept dedications of private property, subject to or conditioned on, future private assessments, liens and/or fees. Accordingly, on behalf of the Director of Parks and Recreation, as well as the County, your request, allegation and/or claim for past-due, as well as future homeowners' maintenance fees is herein denied.

3
Kuau Bayview at Paia Homeowners' Association
April 13, 2004
Page 3

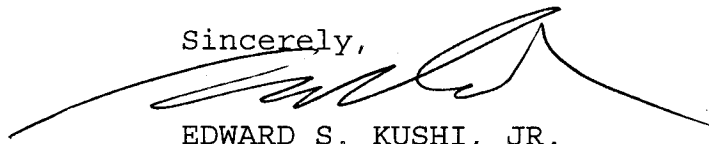
II) RETENTION BASIN PARCEL

A review of the Department of Finance, Real Property Tax Division, records indicate that either your organization, or your predecessor (*i.e.*, "Kuau Bayview at Paia Home") is the fee simple owner of the subject Retention Basin Parcel, said parcel being conveyed to you by Warranty Deed dated March 10, 1999, and recorded on March 29, 1999. The County has no ownership interest in nor control of, the subject Retention Basin Parcel, and on information, the Parks staff is of the belief that either your organization or your predecessor, but not the County, erected the perimeter, chain-link fence.

Based on the above, the County is not liable nor responsible to maintain, repair nor replace the perimeter fencing of the Retention Basin Parcel. However, upon inspection of the break in a relatively small portion of the existing fence that borders the County Park Parcel, and in the spirit of community, the Director of Parks and Recreation will be reviewing his departmental budget for excess funds to repair the existing break.

If you deem a response to this letter is necessary, please do so in writing.

Sincerely,



EDWARD S. KUSHI, JR.

cc: Brian T. Moto, Corporation Counsel
Glenn Correa, Director, Parks and Recreation
Patrick Matsui, Development Division, Parks and Recreation
S:\ALL\ESK\PARKS\Letters\letter to kuau bayview owners' assoc.wpd



KU'AU BAYVIEW ^{AT PA'IA} Homeowners' Association

PO Box 792175 Paia, HI 96779-2175 Phone: 808-579-9889 Fax: 413-294-5941 Email: kuau@mauibuilt.com

Glenn Correa
Director of Parks & Recreation Department
700 Halia Nakoa St, Unit 2
Wailuku, HI 96793
270-7626
parks@co.maui.hi.us

July 24, 2003

Dear Mr Correa:

It has come to the attention of the Board of Directors of the Kuau Bayview at Paia Homeowners' Association that the County of Maui, by virtue of its ownership of Lot 25 in Kuau Bayview, is responsible for paying its share of the Association maintenance fees, but to date has not paid.

The County of Maui is listed in the property tax office as the record owner of the fee simple title to Lot 25 in the Kuau Bayview subdivision. According to Section 8 (a) in the Kuau Bayview Declaration of Covenants, Conditions, and Restrictions:

8. Assessments

(a) Each Owner of a Lot, by acceptance of fee simple title to such Lot, whether or not it shall be expressed in any deed to such Lot or any other conveyance instrument, shall be deemed to covenant and agree to pay such Owner's proportionate share of assessments in accordance with the provisions of this Declaration.

We can find nothing in the Kuau Bayview Articles of Incorporation, the Bylaws, or the Declaration of Covenants, Conditions, and Restrictions that exempts the Owner of Lot 25 from any of the laws that apply to the membership as a whole. One of our largest current expenses is for liability insurance for the retention basin which runs the entire length of Lot 25. One of our largest future expenses will be to repair or replace the chain-link fence which encloses the retention basin and runs approximately 382 feet along the east boundary line of Lot 25. The most likely source of liability & damage to this fence would come from children climbing the fence from Lot 25 into the retention basin, which is almost inaccessible from any other side. Lot 25 is 25,947 sq ft whereas the other Lots are on average 7000 sq ft. It is fair and reasonable that Lot 25 must bear its share of the common expenses in accordance with the governing documents.

All Owners of the 92 other Lots have been paying their assessments ever since they took over ownership of their Lots from A&B. The warranty deed for Lot 25 is dated January 18, 1996 and it was conveyed to the County of Maui on Mar 4, 1997 via document number 97-028663. We have calculated the maintenance fees that should have been assessed to you starting in March 1997 as follows:

Startup Fees paid by everyone	40	
Fees due for: 1997 @ \$20/mo	200	starting in March 97
1998 @ \$25/mo	300	
1999 @ \$25/mo	300	
2000 @ \$25/mo	300	
2001 @ \$25/mo	300	
2002 @ \$25/mo	300	
2003 @ \$20/mo	240	

Total Fees Due: \$1980.00 through Dec 03

EXHIBIT " 1 "

Please make your check for \$1980.00 payable to **Kuau Bayview** and mail to the address below:

Kuau Bayview
PO Box 792175
Paia, HI 96779-2175

Please let us know if you have an email address to which we can send future Fee Notices. We plan to change to annual billing in 2004, so the next payment would be due by Jan 1st, 2004 and would cover the entire year's maintenance fee assessment.

Thank you for your prompt attention to this matter. As it was an oversight on the part of previous Boards and previous management companies that Lot 25 was never invoiced, we are waiving any late fees that have accrued to date; however, if this invoice is not paid by Aug 31/03, our standard late fee of \$5 per month will apply.

Sincerely,



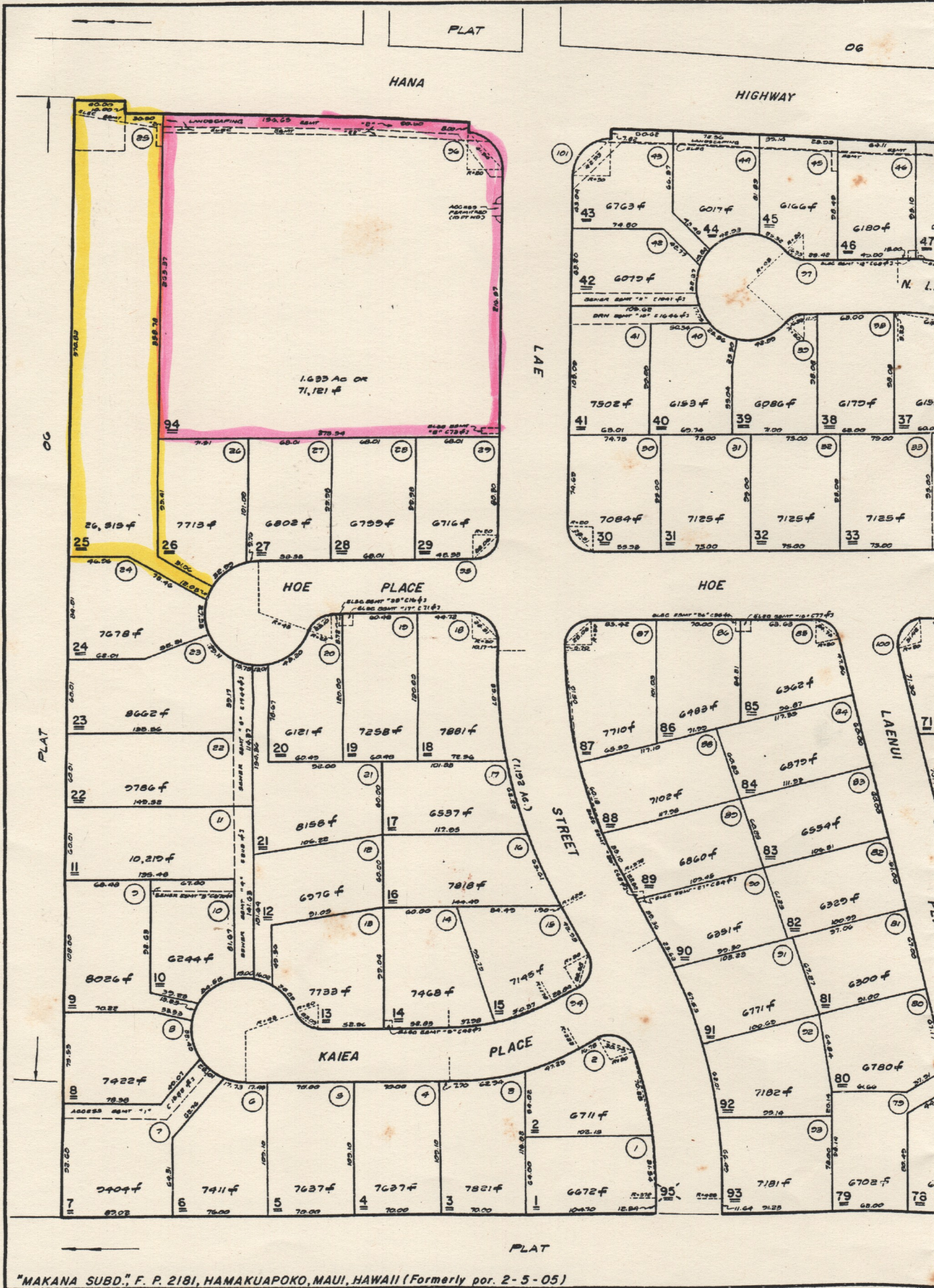
this letter was written by Darlene Brothers but I had Ann sign it as President

Ann Pitcaithley
President
Kuau Bayview at Paia Board of Directors

Excerpt from the Kuau Bayview CC&R's :

6. ASSOCIATION MEMBERSHIP.

- a) **Members of Association.** Membership in the Association shall always consist of and be limited to the record Owners of the fee simple title to each Lot; provided, however, that an Owner may, to the extent provided for in any recorded agreement of sale, assign such Owner's membership rights (including voting rights) to the vendee under the agreement of sale, but in no event shall such assignment serve to (i) release the Owner of any of the Owner's obligations and liabilities under this Declaration (including the Owner's personal liability for the payment of all assessments levied by the Association), (ii) diminish or impair any liens created by this Declaration upon the Owner's fee simple title to the Owner's Lot or the priority of such liens, or (iii) diminish or impair any of the Association's rights under this Declaration (including the right to foreclose its lien upon the Owner's fee simple title to the Lot).
- b) ...
- c) **No Avoidance of Obligations.** No Owner may avoid the obligations of membership by nonuse of the Common Areas or Improvements and Facilities, renunciation or abandonment of the Owner's Lot, or any other act of abandonment or renunciation.
- d) **Termination of Membership.** No membership shall be terminated, forfeited or transferred and no member shall be expelled, except upon transfer of the Owner's entire interest in the Owner's Lot.
- e) **Articles and Bylaws.** The membership status, rights, duties, privileges and obligations of an Owner as a member of the Association shall be as set forth in this Declaration and the Articles and Bylaws. Each Owner of a Lot shall at all times comply with and observe all of the provisions of the Articles and Bylaws.



SOURCE: F. P. 2181
 BY: M.K.K./M.L.
 DATE: September 10, 1955
 DIC NO. 7488

"MAKANA SUBD.," F. P. 2181, HAMAKUAPOKO, MAUI, HAWAII (Formerly por. 2-5-05)

These restrictions would terminate upon installation of all improvements required by this title. Water requirements pursuant to the rules and regulations of the department of water supply shall be installed. (Ord. 2217 § 1, 1993; Ord. 1649 § 2, 1987; Ord. 789 § 1 (part), 1974: prior code § 11-1.9(f))

18.16.280 Monuments.

Monuments approved by the director of public works shall be placed and properly coordinated with the state survey triangulation stations at all angle points or points of curvature in streets, and at such intermediate points as shall be required by the director of public works. All lot and block corners shall be properly established and marked with one-half inch round galvanized pipe or equivalent and firmly and permanently set in the ground. (Ord. 789 § 1 (part), 1974: prior code § 11-1.9(h))

18.16.290 Lot side lines.

The side lines of lots shall run at right angles to streets upon which the lots face, or on curved streets they shall be radial to the curve, as far as practicable. (Ord. 789 § 1 (part), 1974: prior code § 11-1.9(e)(4))

18.16.300 Building lines.

A. If building setback lines which differ from the provisions of title 19 or the general plan are established in a subdivision, they shall be shown on the subdivision plat. Provisions for enforcement of such special setback lines shall be included in the deed restrictions; and the county shall not bear the responsibility for enforcement of setback lines other than those established by county ordinance.

B. For any existing structure within a proposed subdivision, building setback lines different from those required by titles 16 and 19 of this code are permitted, provided that the setback nonconformity is caused by the road widening requirements of section 18.16.060 of this code and the existing structure is at least three feet from all lot lines. After final subdivision approval, the setback nonconformity shall be subject to section 19.500.110 of this code. (Ord. 2482 § 1, 1996; Ord. 789 § 1 (part), 1974: prior code § 11-1.9(g))

18.16.310 Utilities.

A. In general, all utilities shall be located within the road right-of-way and shall conform with standards of the "Maui County Utilities Representative Association and Standards" on file with the utility companies and the department of public works and waste management.

B. If in the opinion of the director of public works and waste management, the director of water supply and the utility companies, the most suitable and reasonable location

for any of the utilities, such as sewers, storm drains, water and gas pipes, electric and telephone pole lines and conduits, which are likely to be required within a subdivision, either for the service thereof or for the service of areas in the surrounding territory, do not lie wholly within the street width, the director of public works and waste management may require provisions to be made for the location as mutually agreed with the subdivider of such utilities on routes elsewhere than within said street width. The subdivider shall designate the required area or areas for all such utility locations outside of the street width.

C. Easements or rights-of-way for sewers, storm drains, public utilities (gas, electrical, and communications), and government owned water facilities shall be not less than fifteen feet in width and may be required to be fenced along the perimeter of said easements or rights-of-way and centered on or along rear or side lot lines except for guywire tie-back easements, which shall be five feet wide by twenty feet long along lot lines at change of direction points of easements; except that this width may be modified where the director of public works and waste management or the board of water supply, or public utilities, whichever is appropriate, finds that a greater or lesser width is necessary or satisfactory for the purpose of the use of the area. When required by the director of public works and waste management, easements or rights-of-way for sewer lines and drain lines shall be conveyed to the county and documents shall be delivered to the county council for acceptance. Easements or rights-of-way for water facilities which are under the jurisdiction of the board of water supply shall be delivered to the board of water supply for acceptance.

D. The director shall adopt rules to implement any of the provisions of this section. (Ord. 2369 § 2, 1994; Ord. 789 § 1 (part), 1974: prior code § 11-1.9(i))

18.16.320 Parks and playgrounds.

A. For the purposes of this section, the following definitions shall apply:

"Approval" means the final approval granted to a proposed subdivision where the actual division of land into smaller parcels is sought; provided, that where construction of a building or buildings is proposed without further subdividing an existing parcel of land, the term "approval" shall refer to the issuance of the building permit.

"Council" means the Maui County council.

"County" means the County of Maui of the State of Hawaii.

"Dwelling unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family and containing a single kitchen.

"Lodging unit" means a room or rooms connected together, constituting an independent housekeeping unit for a family which does not contain any kitchen.

"Parks and playgrounds" mean areas used for active or passive recreational pursuits.

"Privately owned parks and playgrounds" mean parks or playgrounds and their facilities which are not provided in perpetuity or dedicated but which are owned and maintained by or on behalf of the ultimate users of the subdivision pursuant to recorded restrictive covenants. Where the privately owned park is a part of the lot or lots on which a building or group of buildings containing or divided into three or more dwelling units or lodging units are constructed, it shall not be required that the private park or playground meet County subdivision standards nor shall the area of the private park or playground be deducted from the area of the lot or lots for purposes of zoning or building requirements.

"Subdivider" means any person who divides land as specified under the definition of subdivision or who constructs a building or group of buildings containing or divided into three or more dwelling units or lodging units.

"Subdivision" means the division of improved or unimproved land into two or more lots, parcels, sites, or other divisions of land and for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to, or interest in, any or all such lots, parcels, sites, or division of land. The term includes resubdivision, and when appropriate to the context, shall relate to the land subdivided. The term also includes a building or group of buildings, other than a hotel, containing or divided into three or more dwelling units or lodging units. The term includes a building or group of buildings converted from hotel to residential use. The term includes dwelling units or lodging units added to a building or group of buildings, other than a hotel, where the total number of units is three or more.

B. Park dedication requirements.

1. 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
- c. Provide improvement to a park in the community plan region; or
- d. Provide an equivalent combination thereof, pursuant to subsection C.

2. The land provided or dedicated shall meet the following standards:

- a. Each subdivider shall convey the land to the County by warranty deed free and clear of any liens or

encumbrances; pay for recordation of title to the County; and insure the County's title by providing a standard owner's title insurance policy for the County with coverage in the amount of the fair market value of the property dedicated herein;

b. The land provided or dedicated shall be located in the community plan region in which the proposed subdivision is located, or, subject to council approval by resolution approved by a majority of its members, in the community plan region adjacent to the community plan region in which the proposed subdivision is located, excluding Molokai and Lanai;

c. The land provided or dedicated shall have an area of five hundred square feet for each lot or unit, in excess of three, resulting from the subdivision; and

d. The land provided or dedicated shall be subject to acceptance by council resolution after the subdivider has consulted the director of parks and recreation, the director of public works and waste management, and the director of planning who will submit their recommendations to the council within thirty days of the initial park assessment meeting with subdivider or waive the opportunity to do so.

C. In-lieu payment and/or dedication. In lieu of providing land in perpetuity or dedicating land, the director of parks and recreation shall require the subdivider to:

1. Pay to the County a sum of money equal to the number of square feet required by section 18.16.320.B.2.c multiplied by the square footage assessed valuation of the land being subdivided based on the certified real property tax assessment in effect at the time of final subdivision approval;

2. Combine the payment of money with land to be provided or dedicated, on the basis of five hundred square feet per each lot or unit, in excess of three, resulting from the subdivision; or

3. Provide improvement to parks and playgrounds in the community plan region where the subdivision is located. The value of such improvements shall be at least equal to the sum of money required to be paid pursuant to this section. The estimate for the cost of the improvements provided shall be based upon cost estimates certified by an engineer licensed to practice in the State of Hawaii. For subdivisions which qualify as affordable housing projects, this park assessment fee shall be deferred for either one year from the date of final subdivision approval or until fifty percent of the dwelling units of the affordable housing project are sold or rented, whichever occurs first.

D. The County shall use the money received pursuant to this section for the purpose of providing parks and playgrounds for the use of purchasers or occupants of lots or units in the subdivision. The money received in

connection with a subdivision shall accrue to a park assessment fund, and shall be appropriated in the County budget for parks and playgrounds in the community plan region where the subdivision is located. The estimated amount available for appropriation in each community plan region shall be set forth in the operating budget and capital program proposed by the mayor.

E. A subdivider shall receive a credit of one hundred percent of the area of privately owned and maintained parks and playgrounds if the director of parks and recreation determines that the park or playground fulfills the conditions set forth below:

1. Setbacks and other areas required by law shall not be included in the computation of the credit;

2. The size, shape, topography, geology, access, use, and location of the site shall be suitable for park and playground purposes, as determined after consultation with the director of parks and recreation;

3. The physical improvements provided shall meet the needs of the occupants of the subdivision, as determined after consultation with the director of parks and recreation;

4. Such parks and playgrounds shall not include golf courses, marinas, or other similar uses for which a fee is charged;

5. 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; provided further, that the director of public works and waste management and the director of parks and recreation shall have an opportunity to submit recommendations to the council;

6. Prior to subdivision approval, the subdivider shall enter into an agreement with the County and shall provide adequate security, to assure that the required improvements and facilities shall be constructed;

7. The use of the site shall be restricted to park and playground purposes by recorded covenants which shall run with the land, and which shall be enforceable by the owners and occupants of the subdivision, and by the County;

8. The perpetual maintenance of the site by the owners and occupants of the subdivision shall be assured by the recorded covenants running with the land, which shall obligate the owners and occupants of the subdivision to maintain the site in perpetuity, and which shall empower the County to enforce the covenants or cause the maintenance to be performed and subject the properties in

the subdivision to a lien until the cost of the maintenance is reimbursed; and

9. Prior to approval of the subdivision, the subdivider shall execute and record a unilateral agreement in favor of the County to assure that such parks and playgrounds shall be privately and adequately maintained in perpetuity, and that the provisions of this section shall be observed.

F. A subdivider shall receive credit for lands dedicated or provided for park and playground purposes before the subdivision approval, if the director of public works and waste management determines that the lands comply with the following requirements:

1. The lands provided or dedicated shall comply with the requirements of this section;

2. The available credit applicable to a subdivision shall be the area of lands dedicated or provided within the appropriate community plan region, reduced by the land area which would have been dedicated or provided if this section were then in effect, and reduced further by the portion of the credit applied to other subdivisions before the subdivision approval;

3. The portion of the available credit applicable to the subdivision shall not exceed fifty percent of the land area required to be provided or dedicated for that subdivision; and

4. The credit shall not be transferable, but may be apportioned among members of a joint venture subdivider by an agreement filed with the central coordinating agency within sixty days of the date the lands were dedicated or provided.

G. Upon the provision of land in perpetuity or the dedication of land by the subdivider as may be required under this section, the County shall thereafter assume the cost of improvements and their maintenance, and the subdivider shall accordingly be relieved from such costs.

H. The following exemptions and exclusions shall apply:

1. Subdivisions by agencies of the federal, State and County governments shall be exempt from this section.

2. Subdivisions of land into three or less residential lots shall be exempt from this section. The land so subdivided shall not thereafter qualify for this exception with respect to any subsequent subdivision of any of the resulting parcels.

3. A lot resulting from a subdivision, the purpose of which is to dedicate the lot to a federal, State, or County government agency, shall be excluded from consideration for the purposes of this section.

4. Subdivisions for nonresidential use shall be exempt from this section.

1. An appeal from a determination by the director of parks and recreation, the director of public works and

waste management and director of planning pursuant to this section shall be heard by the board of variances and appeals in accordance with chapter 91, Hawaii Revised Statutes. Within sixty days after hearing the appeals the board shall affirm, modify or reverse the determination of the relevant director, giving its reasons for its decision and shall report its decision to the council.

J. The central coordinating agency may promulgate rules in accordance with Hawaii Revised Statutes, chapter 91, to clarify and implement this section. (Ord. 2981 § 1, 2001; Ord. 2956 §§ 1, 2, 2001; Ord. 2470 § 1, 1996; Ord. 2442 §§ 1, 2, 1995; Ord. 2375 § 1, 1994; Ord. 2043 § 1, 1991; Ord. 1874 § 1, 1989; Ord. 1686 § 1, 1988; Ord. 1649 § 1, 1987; Ord. 1539 § 1, 1986; Ord. 1487 § 1, 1985; Ord. 789 § 1 (part), 1974: prior code § 11-1.9(j))

Resolution

No. 97-33RECEIVED
CORPORATION COUNCIL

2003 OCT 16 AM 10:41

ACCEPTING LAND DEDICATED FOR PARK AND
PLAYGROUND PURPOSES PURSUANT TO
SECTION 18.16.320, MAUI COUNTY CODE

WHEREAS, A&E Properties, Inc. (hereinafter called the "Subdivider") is presently developing a residential subdivision known as the Makana Subdivision in Paia, Maui, Hawaii;

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 proposes to dedicate in fee simple to the County of Maui that certain land situated in Paia, Maui, Hawaii, identified as Lot 25 of the Makana subdivision, containing approximately 26,515 square feet, being a portion of Tax Map Key: (2) 2-5-05-57, as more fully described by the legal description in Exhibit "A" attached hereto and made a part hereof (hereinafter called the "Park Parcel"); and

WHEREAS, the Subdivider has consulted with the Director of the Department of Parks and Recreation and the Director of the Department of Public Works and Waste Management, and these Directors had an opportunity to review said proposal and they recommend that Council accept the Park Parcel; now, therefore,

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

1. That the Council herein accepts the Park Parcel to be dedicated in fee simple for park and playground purposes, thereby fulfilling all of the requirements of Section 18.16.320, Maui County Code; and

EXHIBIT "4"

Resolution No. 97-33

2. That it does hereby authorize the Mayor of the County of Maui to execute all necessary documents in connection with the acceptance of said dedication; and.

3. That certified copies of this Resolution be transmitted to the Mayor of the County of Maui, the Director of the Department of Parks and Recreation, the Director of the Department of Public Works and Waste Management, and A&B Properties, Inc.

APPROVED AS TO FORM
AND LEGALITY:



LILLIAN B. KOLLER
Deputy Corporation Counsel
County of Maui
c:\wp51\resc\A&B(syc)



LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail (X) Pickup () To:

COUNTY OF MAUI
DEPARTMENT OF FINANCE
200 S. High St.
Wailuku, Hawaii 96793

AFFECTS TMK: (2) 2-5-05:57 por. Lot.25

WARRANTY DEED

WARRANTY DEED

THIS DEED, made this 18th day of January, 1996, by A&B PROPERTIES, INC., a Hawaii corporation, whose principal place of business and mailing address is 322 Bishop Street, Honolulu, Hawaii 96813, hereinafter called "Grantor", and the COUNTY OF MAUI, a political subdivision of the State of Hawaii, whose principal place of business and mailing address is 200 S. High Street, Wailuku, Maui, Hawaii 96793, hereinafter called the "Grantee",

W I T N E S S E T H :

That for the sum of TEN DOLLARS (\$10.00) and other valuable consideration paid by the Grantee, the receipt of which is hereby acknowledged, the Grantor does hereby grant, bargain, sell and convey unto the Grantee, as Tenant in Severalty, and to its successors and assigns, in fee simple forever, all of that certain land situate at Paia, Hanakuaapoko, Makawao, Island and County of Maui, State of Hawaii, comprising Lot 25 of the Makawao Subdivision consisting of approximately 26,515 square feet, and more particularly described in Exhibit "A", attached hereto and incorporated herein by reference.

And the reversions, remainders, rents, issues and profits thereof and all of the estate, right, title and interests of the Grantor, both at law and in equity, therein and thereto;

TO HAVE AND TO HOLD the same, together with all buildings, improvements, rights, easements, privileges and appurtenances thereon and thereto belonging or appertaining or held and enjoyed therewith, unto the Grantee according to the tenancy herein set forth, forever.

AND, in consideration of the premises, the Grantor does hereby covenant with the Grantee that the Grantor is seized of the property herein described in fee simple; that said property is free and clear of and from all liens and encumbrances, except

for the lien of real property taxes not yet by law required to be paid and except as may be specifically set forth herein; that the Grantor has good right to sell and convey said property, as aforesaid; and, that the Grantor will WARRANT AND DEFEND the same unto the Grantee against the lawful claims and demands of all persons, except as aforesaid.

The conveyance herein set forth and the warranties of the Grantor concerning the same are expressly declared to be in favor of the Grantee, its successors and assigns.

The terms "Grantor" and "Grantee", as and when used herein, or any pronouns used in place thereof, shall mean and include the parties hereto and their respective successors and assigns, according to the context thereof.

IN WITNESS WHEREOF, the Grantor and the Grantee have executed these presents on the day and year first above written.

A&B PROPERTIES, INC.

By [Signature]
Its PRESIDENT

By [Signature]
Its ASST. SECRETARY

"Grantor"

APPROVED AS TO FORM
AND LEGALITY

[Signature]
Deputy Corporation Counsel
County of Maui LILLIAN H. KOLLER

[Signature]
Attorney for Grantor

STATE OF HAWAII

CITY & COUNTY OF HONOLULU

SS:

On this 18th day of January 1996, before me appeared E. R. SEAN and CHARLES W. COMBS to me personally known, who, being by me duly sworn, did say that they are the PRESIDENT and ASS. SECRETARY respectively, of A&B PROPERTIES, INC., a Hawaii corporation, that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said Officers acknowledged said instrument to be the free act and deed of the corporation.

LS

Augustine K. McGuffee
 Notary Public, State of Hawaii

My Commission Expires: 2/18/97

DESCRIPTION

LOT 25
MAKANA SUBDIVISION
(FILE PLAN-2181)

All of that certain parcel of land, being a portion of the land described in the deed from the Board of Education to the Trustees of Oahu College dated January 30, 1860, being also a portion of Lot 11 of Section 2 of the Second Partition of the Hamakuapoko Kai Lands situated at Paia, Hamakuapoko, Island and County of Maui, State of Hawaii.

Beginning at a 1/2-inch pipe at the northeasterly corner of this lot, on the southeasterly side of Hana Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUMENE 2" being 7,342.14 feet North and 6,273.41 feet East and running by azimuths measured clockwise from True South:

1. 230° 41' 40.00 feet along the southeasterly side of Hana Highway to a 1/2-inch pipe;
2. 320° 26' 10.00 feet along same [being along road widening Lot 103 of the Makana Subdivision (File Plan-2181)] to a 1/2-inch pipe;
3. 230° 41' 30.50 feet along same to a 1/2-inch pipe;
4. 320° 26' 358.78 feet along Lots 96 and 26 of the Makana Subdivision (File Plan-2181) to a 1/2-inch pipe;
5. 258° 40' 51.06 feet along Lot 26 of the Makana Subdivision (File Plan-2181) to a 1/2-inch pipe;

6. Thence along the southwesterly side of Hoe Place on a curve to the left with a radius of 43.00 feet, the chord azimuth and distance being: 344° 40' 54" 10.02 feet to a 1/2-inch pipe;
7. 78° 40' 72.46 feet along Lot 24 of the Makana Subdivision (File Plan-2181) to a 1/2-inch pipe;
8. 49° 31' 46.96 feet along same to a 1/2-inch pipe;
9. 140° 26' 370.82 feet along Lot 70 and 71 of the Paia Halelani Subdivision (File Plan 1250) to the point of beginning and containing and Area of 26,515 Square Feet.

SUBJECT, HOWEVER, to Easement 21, being an easement for electrical purposes affecting the above described Lot 25 and being more particularly described as follows.

Beginning at a 1/2-inch pipe at the northeasterly corner of this easement, said pipe being the northwesterly corner of Lot 96 of the Makana Subdivision File Plan-2181, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUNENE 2" being 7,379.40 feet North and 6,334.32 feet East and running by azimuths measured clockwise from True South:

1. 320° 26' 26.07 feet along Lot 96 of the Makana Subdivision (File Plan-2181) to a point;
2. 50° 26' 5.00 feet over and across Lot 25 of the Makana Subdivision (File Plan-2181) to a point;
3. 140° 26' 15.32 feet over and across same to a point;

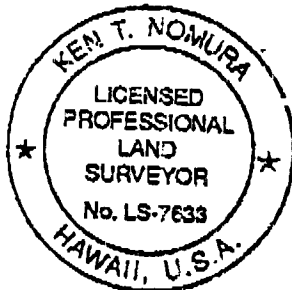
- 4. 59° 06' 66.26 feet over and across same to a point;
- 5. 140° 26' 11.07 feet along Lot 71 of the Paia Halelani Subdivision (File Plan 1250) to a 1/2-inch pipe;
- 6. 230° 41' 40.00 feet along the southeasterly side of Hana Highway to a 1/2-inch pipe;
- 7. 320° 26' 10.00 feet along same [being along road widening Lot 103 of the Makana Subdivision (File Plan-2181)] to a 1/2-inch pipe;
- 8. 230° 41' 30.50 feet along same to the point of beginning and containing an Area of 91.8 Square Feet.

SUBJECT, ALSO, to an existing easement for sewer pump station purposes in favor of the County of Maui as recorded in the Bureau of Conveyances in Liber 21849, Page 11.

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

January 12, 1996

This work was prepared by me or under my supervision.



Ken T. Nomura

 Registered Professional Land Surveyor No. LS-7633

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**COUNCIL OF THE COUNTY OF MAUI
WAILUKU, HAWAII 96793**

CERTIFICATION OF ADOPTION

It is **HEREBY CERTIFIED** that **RESOLUTION NO. 97-33** was adopted by the Council of the County of Maui, State of Hawaii, on the 21st day of February, 1997, by the following vote:

MEMBERS	Patrick S. KAWANO Chair	Jamae "Kimo" APANA Vice-Chair	Mrs. ANUKIWA	J. Kiriwa ENGLISH	Se P. KAMO'OALANA A	A'ua L. LEI	Honolulu Y. PUKAMUNA	Wayne K. NEMEC	Chairman TAJA LES
ROLL CALL	Aye	Aye	Aye	Aye	Excused	Aye	Aye	Aye	Aye

Daniel J. ...
COUNTY CLERK