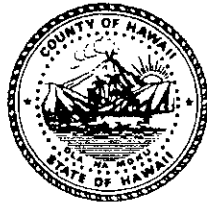


William P. Kenoi  
*Mayor*



BJ Leithead Todd  
*Director*

Margaret K. Masunaga  
*Deputy*

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

## County of Hawai'i PLANNING DEPARTMENT

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

June 25, 2012

Michael J. Rhiem, A.I.A.  
Riehm Owensby Planners Architects  
P.O. Box 390747  
Kailua-Kona, HI 96739

Dear Mr. Rhiem:

**SUBJECT: PLANNED UNIT DEVELOPMENT APPLICATION (PUD-11-000020)**  
**Applicant: RIEHM OWENSBY PLANNERS ARCHITECTS**  
**Owners: AINA LE'A, LLC**  
**Request: PROPOSED PUD: HO'OLEI**  
**Tax Map Key: 6-8-001:036 (Parcel "H" Within Lot D-1-B)**

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After reviewing the information submitted with the Planned Unit Development application, the Planning Director hereby approves Planned Unit Development Permit No. PUD-11-000020 to allow the development of a master-planned community of 70 single family residential lots on land consisting of a total of approximately 23.51 acres. This PUD addresses variances for minimum building site area and widths, roadway improvements, minimum yard setbacks, and lot configuration.

### BACKGROUND

#### Project Location

The subject property (TMK: 6-8-001:036), hereinafter referred to as "Property", consists of a total of approximately 23.51 acres. The Property is situated within the District of South Kohala, Hawai'i, on the east (mauka) side of Queen Ka'ahumanu Highway, approximately 1.00 mile east of the Mauna Lani Resort.

#### Land Use Designations

The property is situated within the State Land Use Urban District and currently designated as Urban Expansion by the County General Plan, Land Use Pattern Allocation Guide (LUPAG) Map. The County zoning designation for the Property is Multiple Family Residential – 14,500 square feet of land area per dwelling unit (RM-14.5). Based on applying the required 14,500 square feet minimum land area per dwelling unit against the total land area of 23.51 acres a total of 70 units would be the maximum dwelling unit density that is allowable by zoning. Anticipating that roughly 20 percent of the subject property would

be dedicated to supporting roadway and drainage systems, a more realistic total unit count could be in the neighborhood of 56 units. If the zoning allowed for the minimum lot size of 7,500 square feet, and still considering 20% infrastructure area, the number of lots could be 109. Through this PUD Permit, the applicant will be able to develop a total of 70 lots via the requested variances, primarily by allowing the reduction of the 14,500 square feet minimum per unit area and minimum building site average width, to maintain an overall unit density consistent with the property's RM-14.5 zoning. Each proposed lot will maintain a minimum lot size ranging from approximately 6,151 square feet to 18,885 square feet. The Project, with the approval of this PUD, will be consistent with the requirements of the Zoning Code and the land use policies of the General Plan since it does not exceed the overall maximum density permitted by the zoning designation.

Change of Zone Ordinance No. 93-001 (as amended by Ordinance No. 96-153) was approved by the County Council effective January 8, 1993 to allow for the rezoning of the Property to its current designation of RM-14.5.

The South Kohala Community Development Plan (SKDCP), adopted by the County Council on December 1, 2008, identifies the property as located in the Urban Area. The property is consistent with the Land Use policies in the SKDCP, as the property is considered an "infill" rezoning.

### **Description of Project Site**

The Property consisting of 23.51 acres is currently vacant of any use or structure. Elevations within the Property range from approximately 360 feet at the lowest point to approximately 470 feet at the highest point, providing an elevation range of approximately 110 feet. The Project Site offers both Mauka and Makai view opportunities with appropriate lot orientation. The site has a variety of slopes with an average slope of 6 percent. The petition area is in an a'a lava field in its natural state and vegetation within the Property area is virtually nonexistent. No endemic species of animals were located nor were their habitats. An archaeological survey of the property was conducted by others over the years that located a number of sites. The reports concluded that the data collected at various sites in the much larger project area were adequate for mitigating any potential impacts. The actual area of the proposed development however was not found to have any sites of importance.

### **Proposed Subdivision Improvements**

The proposed Ho'olei project, as permitted by this PUD Permit, will allow the applicant to create a 70-lot single-family residential subdivision, with lot sizes ranging from 6,151 square feet to 18,885 square feet. Access to the Property will be from the Queen Ka'ahumanu Highway via a future mauka-makai roadway over Easement "A" of FSA-SUB-09-000860, a 60-ft. wide right-of-way and a main entry road with a 44-ft. wide right-of-way. This mauka-makai access is to be constructed in conjunction with this and other developments within the "Villages of Aina Le'a" project.

The Applicant, through this PUD Permit, will be allowed to create internal subdivision roadways to service its proposed 70-lot subdivision that will deviate from the minimum requirements of the Subdivision Code. The Project's internal roadway system will incorporate private streets in order to make for a more pedestrian friendly environment. The internal roadways will be designed incorporating street trees and other landscape devices to provide for a more people-scaled neighborhood environment.

Interior Minor Streets with a 50' right-of-way (see EXHIBIT 27): These are private streets with a 50 foot right-of-way, 26 - 28 feet of paved roadway, no curbs or gutter and 4 foot sidewalks on either one or both sides of the street and on-street parking allowed on both sides of the street. The 7 - 8 foot shoulders on each side of the paved roadway shall be landscaped with plant material and street trees. This street is designed as a "queuing" street which is a two-way street with only a single travel lane requiring one opposing vehicle to pull over while the other passes by where cars are parked on both sides. The Homeowner's Association (HOA) shall maintain all aspects of this street.

Interior Minor Streets with a 30' right-of-way (see EXHIBIT 28): These are private streets with a 30 foot right-of-way, two drive lanes at 10 feet each, no curb, gutter or sidewalks and no on-street parking allowed. The 5 foot shoulders on each side of the drive lanes shall be landscaped with plant material and street trees. The Homeowner's Association (HOA) shall maintain all aspects of this street.

Curb radii at the main intersections of the internal roadway shall be designed to accommodate emergency vehicles and will be coordinated with the Fire Department.

Recognizing that the streets in a neighborhood are often used for a variety of purposes besides just vehicular circulation, the street design is developed anticipating use by pedestrians, joggers, and bicycle riders. The street layout, narrower pavement widths, sidewalks on one or both sides of the street and the use of street trees should provide a setting where pedestrians are acknowledged among multiple modes of transportation besides the automobile.

### **Compatibility with Neighboring Uses**

The Property is situated within an area primarily designated for urban uses within the State Land Use District and County Zoning. The Property essentially resides within the urban area as defined in the SKCDP. The Project Site is located adjacent to the Lulana affordable housing community development to the west. Inasmuch as the proposed Project will establish residential lots that are consistent with permitted density allowed by zoning, the development of the Project will remain consistent with residential uses that prevail and/or are proposed within the surrounding area.

### **Project Objectives and Description**

According to the Applicant, the objectives for the "Ho'olei" residential subdivision project include the following:

- Provide a neighborhood environment that encourages a sense of community and promotes social interaction.
- Provide a pedestrian oriented environment and streetscape.
- Develop a master plan that fits harmoniously into the local context and provides a "sense of place."
- Through the use of CC&R's, encourage housing design that respects the local building vernacular and encourages energy efficiency through the use of passive and active solar devices.

The Project site will be developed in one phase, totaling 70 lots, provided that it is done so in conformance with the requirements of this PUD Permit and the requirements of the Subdivision Code.

The applicant's project schedule anticipates the site work to be completed within 12 months from the date of approval of this PUD Permit and issuance of Tentative Subdivision Approval or Final Subdivision Approval through bonding, with completion of sales of lots within 3 years from the date of issuance of Final Subdivision Approval or completion of site work.

### **AGENCIES' REVIEW**

**Department of Public Works (DPW):** Memorandum dated October 12, 2011.

"We reviewed the subject application with the understanding that all the proposed subdivision streets will not be eligible for conveyance to the County and will be owned and maintained by an association of property owners. Our comments are as follows:

A more comprehensive master plan should be provided to show how the proposed PUD fits in the context of the overall concept plan for the community.

A variance is requested for Section 23-48 Cul-de -sacs. The applicant should be required to satisfy the Hawai'i Fire Department for access by emergency vehicles.

There is a watercourse shown on the USGS map that may impact the subject property. A flood study may be required to identify the area of potential inundation and establish base flood elevations. Watercourse alterations are subject to DPW approval.

#### **BUILDING**

1. Buildings shall conform to all requirements of code and statutes pertaining to building construction.

#### **DRAINAGE**

1. All development generated runoff shall be disposed of on-site and shall not be directed toward any adjacent properties.
2. The applicant shall be informed that if they include drywells in the subject development, an

Underground Injection Control (UIC) permit may be required from the Department of Health (DOH), State of Hawai'i.

3. A drainage study shall be prepared, and the recommended drainage system shall be constructed meeting with the approval of DPW.

#### EARTHWORK

1. All earthwork and grading shall conform to Chapter 10, Erosion and Sediment Control, of the Hawai'i County Code (HCC).
2. The applicant shall comply with Chapter 11-55, Water Pollution Control, Hawai'i Administrative Rules, DOH, which requires an National Pollutant Discharge Elimination System (NPDES) permit for certain construction activity.

#### ROADWAYS

1. All streets within the proposed development should follow nationally accepted geometric design guidelines. ..."

#### **Fire Department (HFD):** Memorandum dated September 23, 2011.

"We have no comments to offer at this time in reference to the above-mentioned Planned Unit Development Application."

#### **Police Department (HPD):** Memorandum dated September 29, 2011.

"The above-referenced application has been reviewed, and we have no objections or comments to offer at this time."

#### **Department of Environmental Management (DEM):** Memoranda dated September 15, 2011.

"The Solid Waste Division has reviewed the subject application and offers the following recommendations:

- a. Commercial operations may not use transfer stations for disposal.
- b. Aggregates and any other construction/demolition waste should be responsibly reused to its fullest extent.
- c. Ample and equal room should be provided for rubbish and recycling.
- d. Green waste may be transported to the green waste sites located at the Kailua and Hilo transfer stations, or other suitable diversion programs.

- e. Construction and demolition waste is prohibited at all County Transfer Stations.
- f. Submit Solid Waste Management Plan in accordance with attached guidelines."

"The Wastewater Division has reviewed the subject application and offers the following recommendations: No Comments."

**Department of Water Supply (DWS):** Memorandum dated October 13, 2011.

"We have reviewed the subject application and our comments and conditions from our July 8, 2011, memorandum for Subdivision Application No. 11-001070 to you still stand.

The Department reiterates that we cannot ensure that water will be available from our water system for the subject development, until the water system improvements required per the agreement have been completed and accepted by our department and the Water Board. "

**Department of Land and Natural Resources – State Historic Preservation Division (DLNR-SHPD):**  
Letter dated September 26, 2011.

"Thank you for the opportunity to review this application. The application indicates the aforementioned TMK parcel, which totals 23.514 acres, will be developed as part of a large master planned community. This development will include single and multi-unit housing structures with associated roadways, sidewalks, and utilities. Our records indicate that this project area was subjected to an Archaeological Inventory Survey (Moore et. al. 2002, SHPD Rpt. No H-0173) that covered a larger portion of the Aina Le`a project area. These AIS identified nine archaeological sites, one of which was recommended for data recovery (Site 50-10-11-22514). Upon completion of the data recovery work this site was designated for preservation (Moore and Kennedy 2005 SHPD Rpt. H-02266).

Our records indicate that there are no significant archaeological sites that were recommended for data recovery or preservation located within in the proposed project area. The preservation sites (SIHP Site 50-10-11-22514 and 50-10-11-15013) are outside of the subject parcel and will not be affected by the proposed action. Therefore, we believe that **no historic properties will be affected** by this proposed project.

We wish to note that aerial photographs show the northern section of Parcel :036 is underlain with an older lava flow, which in other portions of the Aina Le`a property, contains lava tubes that were utilized for habitation (SIHP Site 50-10-11-22514) and interment (SIHP Site 50-10-11-15013) by pre- contact Native Hawaiians. There is a possibility that previously unidentified lava tubes could be present and discovered during construction. In the event that historic resources, including human skeletal remains, structural remains, sand deposits, midden deposits, lava tubes, or lava blisters/bubbles are identified during construction activities, please cease work in the immediate vicinity of the find, protect the find from additional disturbance, and contact the State Historic Preservation Division at (808) 933-7653."

## PUBLIC COMMENTS

(SEE COPIES OF ORIGINAL CORRESPONDENCES ATTACHED)

- a. Original letter received from Peter Hackstedde, President, Puakō Community Association on September 26, 2011 opposing the PUD application. Objection based on the LUC reversion of the subject property to an Agricultural designation thus rendering the proposed development nonconforming. See EXHIBIT 1.
- b. E-Mailed (Via Carol L. Drayton, Legal Assistant to Baine P. Kerr) and original letter received from Baine P. Kerr, HutchinsonBlackandCook, Attorneys at Law on October 10 & October 13, 2011, respectively, opposing the PUD application. Objection based on the LUC reversion of the subject property to an Agricultural designation thus rendering the proposed development nonconforming. See EXHIBIT 2 & 2-A.
- c. Letter received from Roy A. Vitousek III of Cades Shutte on behalf of Mauna Lani Resort Association (MLRA) on October 12, 2011 opposing the PUD application. Opposition to Planning Department acceptance of the Environmental Impact Statement, completeness of the PUD application (not all landowners' authorization) and noncompliance with reverted LUC designation. See EXHIBIT 3 & 3-A.

## APPROVED VARIANCES

The following variances are hereby approved:

### Variances to the Zoning Code

- **Flag Lots** (Hawai'i County Code §25-4-14). The site plan provided by the Applicant shows three proposed flag lots. This variance request is for flag lots below the minimum building site area of 14,500 square feet as well as allow for minimum yard setbacks (all side yards) that will be less than that required in an RM-14.5 zoned district. However, Exhibits 7, 11 & 17 depict Lots 19, 11 and 53, respectively and Project Presentation Drawing A-1 indicates the flag lots as having land areas in excess of the minimum required. The minimum setback of side yards for two story dwellings is 10-feet in the zoning district. This shall be waived in favor of minimum 8-foot side yards as designated in the exhibits.
- **Minimum Building Site Area; Minimum Average Width** (Hawai'i County Code §25-4-31). This variance will allow for lots as small as 6,000 square feet in lieu of the minimum 14,500 square feet lot size required by its RM-14.5 zoning designation. Aside from simply maximizing the number of lots that can be developed onto this Project Site, the different shaped lots, sizes and widths, allow for the unique street layout which develops the desired character of the neighborhood environment. Therefore, this variance is approved with the understanding that a reduction in minimum building site area is necessitated by topographic and design constraints and not simply maximizing unit count. Therefore, a minimum building site average width of 45 feet is approved in lieu of the required 60 feet.

- **Reduction of Building Site below Minimum Area** (Hawai'i County Code §25-4-32). This variance will allow for lots as small as 6,000 square feet in lieu of the minimum 14,500 square feet lot sizes required by its RM-14.5 zoning designation.
- **General Requirements for Yards and Open Spaces** (Hawai'i County Code §25-4-40 (a)). This variance will allow the application of deviations from the code required minimum yards and open spaces. Since the roadway system is privately owned and maintained, and due to the comprehensive design applied to the subdivision layout, we have no objection to this request under the condition that the application of yards and setbacks, as provided by the PUD, is limited to the configurations shown on Exhibits 5 to 18.

#### Variances to the Subdivision Code

- **Lot Side Lines** (Hawai'i County Code §23-35). Applicant is requesting that lot side lines, which should run at right angles to the street as far as practicable, be waived in order to maintain a more rectangular shape to the proposed lots, thereby accommodating a better building site configuration. Note that this section of code already provides flexibility for such design consideration.
- **Minimum Right-of-Way and Pavement Widths** (Hawai'i County Code §23-41). The Applicant is requesting a variance from the minimum rights-of-way widths, pavement widths and right-of-way improvement coverage for its internal, minor-type roadways. The requested variances are related to right-of-way widths, the use of medians, and traffic calming features within the right-of-way, and elimination of curb/gutter details as detailed in Exhibits 37, 38 & 39. We support the issuance of these variances for these internal subdivision roadways, which are considered private streets. The request is for the project's interior roads while the County dedicable access road shall remain a County dedicable minimum right-of-way, paving width and cross section per DPW Standard Details (Std. Det.). Applicant to meet ADA requirements for accessible route within any dedicable street.
- **Intersection Angles: Corner Radius** (Hawai'i County Code §23-45). Applicant requests that certain intersections within the private roadways have corner radii as depicted in Exhibits 19 to 24, with all other right-of-way lines having a minimum corner radius of 8 feet, subject to sight distance requirements at the pavement line with the actual edge of pavement having a radius of no less than 20 feet. This variance is approved on the basis that these reduced corner radiuses will occur only at those intersections within the private subdivision internal access road system.
- **Cul-de-sacs** (Hawai'i County Code §23-48). Applicant requests a variance from the requirement for a turn-around at the end of a cul-de-sac that has other than the required 45-foot radius turnaround. We have no objections to this variance as the short distance of these cul-de-sacs and curbless shoulders should provide ample opportunities for any vehicle to turn around if additional turning space is necessary. However, the Applicant shall consult with the HFD to ensure that this alternative cul-de-sac design will meet with their approval. No variance from the maximum 18-lot limit along cul-de-sacs is necessary since the Applicant's subdivision layout is compliant with this requirement. The deviations are limited to the Exhibits (20, 22 & 24) as included within this PUD Permit.



- **Grades and Curves** (Hawai'i County Code §23-50). Applicant requested a variance from the minimum requirements for vertical and horizontal curves. This variance is approved on the basis of providing design flexibility in the presence of site constraints, but in a manner as generally represented in the Applicant's master plan. *In those instances where the vertical or horizontal curves do not meet the minimum requirements, the Applicant shall present alternate standards at the time of construction plan review, as provided for in §23-50(b), with lower design speeds assigned in order to meet the roadway safety standards as specified within the AASHTO Policy on Geometric Design of Highways and Streets, 2001.* The geometric design of the streets should be based on the AASHTO Guidelines for Geometric Design of Low Volume Roads (average daily traffic volume of less than 400 vehicle trips per day).
- **Street lights** (Hawai'i County Code §23-93). Applicant requested design flexibility in the placement and type of street lights permitted within the internal subdivision road rights-of-way. The Applicant proposes the use of custom street lighting fixtures within the privately-owned roadways within the Project site (see Exhibit No. 25). Due to the limited number of lots to be serviced by the private internal subdivision roadway, a reduction in the number of lights would help to impart a more consistent rural type of feel while having sufficient lighting primarily at critical points for traffic safety considerations. *This variance is approved subject to the condition that a licensed engineer certify the safety of the lighting plan for the minor streets is in compliance with the applicable standards of Chapter 14, Article 9, Hawai'i County Code.* This deviation will only be permitted within that section of roadway to be privately owned and maintained. The Homeowner's Association shall maintain the project's street lights located on all privately-owned streets.
- **Street Names & Traffic Signs** (Hawai'i County Code §23-94). Approved to allow use of custom street name and traffic signs that will reinforce the desired character of the proposed residential neighborhood and its design goals (see Exhibit No 26). While this variance will allow these signs to deviate from standard specifications, it must still meet AASHTO specifications. This deviation will only be permitted within that section of roadway to be privately owned and maintained. The Homeowner's Association shall maintain the project's street name and traffic signs located on all the streets.
- **Right of way Improvement** (Hawai'i County Code §23-95). While this variance approval would allow for deviation from the County's Std. Det. regarding the improvement of the entire road right-of-way, such improvements of the right-of-way will be in conformance with the improved right-of-way detail for the approved PUD roadway as shown on Exhibits 27 & 28. The Homeowner's Association shall maintain the landscape planting areas and street trees located in all the Project's street right-of-ways.

#### Variances Not Issued

- **Fences and Accessory Structures** (Hawai'i County Code §25-4-43). This requested variance is not being approved because retaining walls can be over 6 feet in height from the road grade provided that the final height of the retaining wall is not over 6 feet from the finished elevation of the lot.

## FINDINGS

This PUD is granted in accordance with the following findings:

- 1) The construction of the Project shall begin within a reasonable period of time from the date of full approval and shall be completed within a reasonable period of time.**

The Applicant is ready to start development as soon as final subdivision approval is issued, with infrastructural improvements and basic grading done to accommodate home construction within twelve (12) months from the issuance of final subdivision approval. The Applicant anticipates that sales for the entire development will be completed within 36 months after the lots are made available, subject to market conditions.

- 2) The proposed development substantially conforms to the General Plan.**

The proposed residential lots are consistent with the General Plan LUPAG Map designation for the Property of Urban Expansion. The proposed lots are consistent with the General Plan Land Use and Housing goals and policies by providing a diversity of housing choices to meet a range of housing needs and designing in accordance with the environment. Urban Expansion allows for a mix of high density, medium density, low density, industrial, industrial-commercial and/or open designations in areas where new settlements may be desirable, but where the specific settlement pattern and mix of uses have not yet been determined. Thus, the proposed development would be consistent with the General Plan land use designation and will be in harmony with the character of the surrounding neighborhood and result in an intensity of land utilization no higher than as permitted or as otherwise specified for the district in which this proposed development occurs. This project will simply add to a diverse mix of uses within this immediate area.

The South Kohala Community Development Plan (SKCDP), adopted by the County Council on December 1, 2008 identifies the property as located in the Urban Area. The property is consistent with the Land Use and Transportation policies in the SKDCP, as the property is considered an "infill" rezoning.

- 3) The proposed development shall constitute an environment of sustained desirability and stability, shall be in harmony with the character of the surrounding neighborhood, and shall result in an intensity of land utilization no higher than and standards of open space at least as high as permitted or as otherwise specified for the district in which this development occurs.**

The proposed 70-lot residential subdivision will provide a density that will not exceed the maximum density permitted by zoning, which is calculated at 70 units (lots) across the entire 23.51 acre Project Site. With the approval of this PUD, it will allow the Applicant to configure its proposed lots and roadways to realize the type of residential use that is generally consistent with uses within this particular area of South Kohala. This PUD will allow the Applicant this opportunity, which we believe is reasonable and will not compromise existing and potential land uses within the surrounding area. In

fact, given its close proximity to Mauna Lani Resort and the other developments within the Villages of Aina Le'a and the availability of supporting uses and facilities, this area could be appropriate for supporting even higher residential densities and uses than that being proposed by the Applicant.

- 4) **The development of a harmonious, integrated whole justifies exceptions, if required, to the normal requirements of the Zoning and Subdivision Codes, and that the contemplated arrangements or use make it desirable to apply regulations and requirements differing from those ordinarily applicable under the district regulations.**

The project is designed to address the needs and lifestyle of those residents who want to live in a residential community that promotes social interaction, encourages outdoor activities, and is pedestrian oriented. The project consist of 70 single family residential lots with a streetscape designed to create a sense of place reminiscent of our older, more traditional neighborhoods. Emphasis is placed on the design of the streets to provide a safe setting for pedestrians and to mitigate the speed of the automobile.

The granting of this PUD will allow for greater flexibility in addressing design and aesthetic issues. It will allow for a roadway system that promotes a landscaping and casual pedestrian movements rather than the more efficient, but visually unappealing, system of widely paved roadways and constructed sidewalks.

### **CONDITIONS OF APPROVAL**

The Planning Director approves the Planned Unit Development subject to the following conditions:

1. **Permit Runs with the Land.** The applicant, its successors, or assigns, shall be responsible for complying with all of the stated conditions of approval, including those conditions within Change of Zone Ordinance No. 93-001 (as amended by Ordinance No. 96-153). Should a conflict arise between the requirements of this PUD and Change of Zone Ordinance No. 93-001 (as amended by Ordinance No. 96-153), the requirements of the change of zone ordinance, as may be amended from time to time, shall prevail.
2. **Master Plan and Street Layout.** The proposed Planned Unit Development shall be developed in a manner as substantially represented within exhibits and figures attached to this Planned Unit Development Permit.
3. **Roadway Design Guidelines.** All roadways not required to be constructed to County-dedicable standards shall follow the guidelines incorporated in the Hawai'i Statewide Uniform Design Manual for Streets and Highways or the applicable AASHTO design guide for the appropriate design speed. The geometric design of the interior subdivision access road should be based on the AASHTO Guidelines for Geometric Design of Low Volume Roads. Utility poles within these subdivision roads shall conform to DPW Std. Det. R-36 (revised).

4. **Construction Plan Review by Fire Department.** The Applicant shall consult with the HFD to ensure conformance of roads within the Project Site to the minimum requirements of the Fire Code. Besides the DPW and DWS, construction plans shall also be submitted to the HFD for review.
5. **No Additional Dwellings.** The Applicant shall record a declaration affecting all proposed lots within the Planned Unit Development which shall give notice that the terms of this Planned Unit Development Permit shall prohibit the construction of a second dwelling unit on each lot. The proposed declaration is to be recorded with the Bureau of Conveyances by the Planning Department at the cost and expense of the applicant/subdivider.
6. **Compliance with Other Rules and Conditions.** The applicant shall comply with all other applicable rules, regulations and requirements. Other applicable conditions set forth under the "Approved Variances" section of this letter are incorporated herein as conditions of approval.
7. **Time Extension.** Pursuant to Section 25-2-7 of the Zoning Code, an application for the subdivision of the Property, in accordance with the terms and approvals granted by this PUD Permit, shall be submitted to and accepted by the Planning Department within two years from the date of this permit. If the applicant should require an extension of time, the applicant may request a time extension pursuant to Section 25-6-14 (Time extensions and amendments).

Should any of the conditions fail to be met or substantially complied with in a timely fashion, the Director shall initiate the nullification of the Planned Unit Development Permit.

Sincerely,



BJ LEITHEAD TODD  
Planning Director

JRH:nci  
P:\Admin Permits Division\PU\2011\PU\11-000020 Aina Le'a Ho'olei\Decision.doc

Encls: Exhibits and Figures

Michael J. Rhiem, A.I.A.  
Riehm Owensby Planners Architects  
Page 13  
June 25, 2012

cc: Department of Public Works, Engineering (Hilo and Kona)  
Department of Water Supply  
Department of Environmental Management  
Fire Department  
Police Department

Peter Hackstedde, President,  
Puakō Community Association  
P.O. Box 44345  
Kamuela, HI 96743

Baine P. Kerr  
HutchinsonBlackandCook, Attorneys at Law  
921 Walnut Street, Suite 200  
Boulder, CO 80302

Roy A. Vitousek III  
Cades Shutte  
75-170 Hualālai Road, Suite B-303  
Kailua-Kona, HI 96740

cc w/encls: West Hawai'i Planning Office

**HutchinsonBlackandCook**  
Attorneys at Law

PLANNING DEPARTMENT  
OFFICE OF THE DIRECTOR  
701 PAUHI ST. SUITE 3  
HILO, HI 96720

Baine P. Kerr  
bkerr@hbcboulder.com

October 10, 2011

Bobby Jean Leithead Todd  
Planning Director, Hawaii County Planning Department  
Aupuni Center, 101 Pauahi St. Suite 3  
Hilo, HI 96720

Re: Comments of Baine Kerr, 22 Puako Beach Drive,  
about Aina Le'a LLC PUD 11-000020 - Riehm Owens  
by Planners Architects TMK: 6-8-001:036 Parcel "H" within Lot D-1-B

Dear Ms. Leithead Todd:

STATEMENT OF INTEREST

My wife and I have been homeowners in Puako for 23 years and regular, extended-stay visitors there for five years prior. I am lawyer and novelist; my wife, Cindy Carlisle, was a public servant—city councilmember and university regent. In 1983-84 we first came to South Kohala during a 13-month leave on a fiction writing fellowship from the National Endowment for the Arts of the U.S. government, during which we lived for several months in Puako then in Waimea. Over the last 27 years we have witnessed the full history of the development of the South Kohala coast; when our tenure began the Mauna Lani Bay Hotel was just opening its doors. Over those 27 years not one has passed without one or both of us spending a significant portion in Puako. We have followed the checkered development history of the property in question from its inception 20 years ago with Nansay Hawaii and Signal Puako and now Bridge Aina Le'a and Aina Le'a LLC. We provided you our comments on the DEIS in a letter dated July 4, 2010. We stated at that time: "The Land Use Commission's 2009 decision to revert the land to agriculture was the right one in our view. The Villages of Aina Le'a seem in fact to be The Potemkin Villages of Aina Le'a—false fronts, impressive on paper, but lacking in substance and good faith."

COMMENTS ON PUD APPLICATION

I note that you have given tentative approval for the subdivision application 11-001070 to DW Aina Le'a, aka Aina Le'a LLC, in spite of the LUC decision to revert all the lands of Aina Le'a to Agriculture zoning. I intend to appeal the final approval of this application in the event you give final approval and I strongly suggest you withdraw your tentative approval immediately. Furthermore, I will take action to oppose any more approvals, including the pending PUD application 11-000020.

**HBC**  
921 Walnut St., Suite 200, Boulder, CO 80302 | Tel: (303) 442-6514 | Fax: (303) 442-6593 | Toll Free: (800) 303-6514  
www.hbcboulder.com

074645

EXHIBIT 2

EXHIBIT 1

PLANNING DEPARTMENT  
OFFICE OF THE DIRECTOR

SEP 26 AM 11:03

**Puako**  
COMMUNITY ASSOCIATION

September 22, 2011

Ms. Bobby Jean Leithead Todd  
Planning Director, Hawaii County Planning Department  
Aupuni Center, 101 Pauahi St. Suite 3  
Hilo HI 96720

RE: PUD 11-000020 - Riehm Owensby Planners Architects  
TMK: 6-8-001:036 Parcel "H" within Lot D-1-B

Dear Director Leithead Todd:

The Puako Community Association (PCA) is aware of a pending application for a 70 single family residential lot subdivision on a 23.514 acre parcel owned by Aina Le'a LLC. As you know, on May 13, 2011, the State Land Use Commission (LUC) took the final step in reversion to Ag of Aina Le'a land when the commission denied DW Aina Le'a's request to modify certain conditions of the original LUC Decision and Order. We understand the reversion applies to all of the Bridge Aina Le'a properties including this parcel owned by DW Aina Le'a, or Aina Le'a LLC. With respect to the action of the State LUC we believe that the proposed subdivision fails to conform to Agricultural zoning.

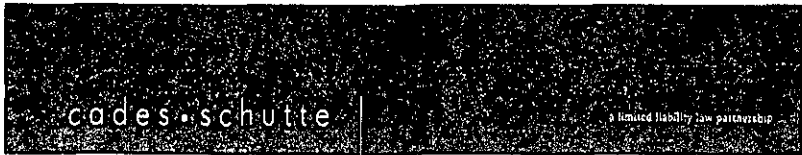
The PCA is opposed to any non-conforming use of the Bridge and DW Aina Le'a, or Aina Le'a LLC, lands and we request that you deny the applicant any permits that are not in compliance with State and Hawaii County land use laws and the recent decision of the State LUC.

Yours truly,

Peter Hackstedde  
President, Puako Community Association

P.O. Box 44345, Kaneohe HI 96743

074361



October 11, 2011

Ms. BJ Leithead Todd  
Planning Director  
County of Hawaii  
101 Pauahi Street, Suite 3  
Hilo, Hawaii 96720

Roy A. Vitousek III  
Direct Line: (808) 329-5811  
Direct Fax: (808) 326-1175  
E-mail: rvitousek@codes.com

PLANNING DEPARTMENT  
COUNTY OF HAWAII  
OCT 12 PM 1:14

Re: Planned Unit Development Application, PUD 11-000020  
TMK No. (3) 6-8-001: 036, Waikoloa, South Kohala, Hawaii  
Applicant: Aina Le'a, LLC (Landowners identified on attached list)

Dear Ms. Leithead Todd:

As you are aware, this office represents the Mauna Lani Resort Association ("MLRA") relative to Aina Le'a, LLC's proposed development in the ahupua'a of Waikoloa, South Kohala, Hawaii. MLRA is the master association for the property owners at Mauna Lani Resort. The Mauna Lani Resort property owners hold title to and manage certain components of the resort infrastructure including but not limited to roads, bike and trail easements, and cultural and recreational areas. MLRA owns and manages properties which are immediately makai of Queen Ka'ahumanu Highway and adjacent to properties which are the substance of PUD 11-000020 Application (the "Application"). As an adjoining landowner and as the owner of land and facilities which will be utilized by residents of the development under consideration, MLRA has a special and personal interest in the subject matter of the Application. MLRA's interests are clearly distinguishable from the interests of the general public.

MLRA is the Plaintiff in the civil litigation action entitled Mauna Lani Resort Association, a Hawaii nonprofit corporation, v. County of Hawaii; Bobby Jean Leithead-Todd, Director of the County of Hawaii Planning Department in her official capacity; DW 'Aina Le'a Development, LLC, a Nevada limited liability company; and RELCO Corp., a Nevada corporation, Civil No. 11-01-005K, Third Circuit Court, State of Hawaii. MLRA has challenged the County Planning Department's acceptance of the Environmental Impact Statement ("EIS") for DW 'Aina Le'a's proposed development, including the area which is currently under consideration in the Application. The current Application proposes to create more than 49 lots, which will have to be served by a new wastewater treatment facility. Therefore it triggers Hawaii Revised Statutes, chapter 343. MLRA has consistently taken the position that the EIS accepted by the Planning Department did not adequately assess potential impacts of the proposed development and MLRA is currently pursuing this position in litigation. The Planning Department should not consider the pending Application until the challenge to the EIS is resolved.

074702

C S

Codes Schutte Building  
1000 Bishop Street, Suite 1200  
Honolulu, Hawaii 96813  
Tel: 808 519-9200  
Fax: 808 519-9710  
www.codes.com

Kona Office  
71-170 Hualalai Road, Suite B-305  
Kailua Kona, Hawaii 96740  
Tel: 808 329-5811  
Fax: 808 329-1175

Bobby Jean Leithead Todd  
October 10, 2011  
Page 2

Very truly yours,

Baine P. Kerr

BPK/cld

EXHIBIT 3

EXHIBIT 2/A

Ms. BJ Leithead Todd  
October 11, 2011  
Page 2

The State of Hawaii Land Use Commission has revoked the Urban designation for the subject property and has returned that property to its former land use classification in the Agricultural land use district. The Application is inconsistent with the criteria for development in the state land use agricultural district under chapter 205, HRS. The proposed use is inconsistent with the state land use classification even if the proposed use were consistent with zoning. The County of Hawaii is bound by HRS chapter 205 and does not have the discretion to allow land uses which are inconsistent with state land use classifications as prescribed by HRS chapter 205.

Further, the proposed development does not meet the criteria under Hawaii County Code section 25-6 or Planning Department Rule 7 for approval of a planned unit development. The Application is not consistent with representations made by the developer to the Land Use Commission, to the County Council when zoning was approved, and to numerous other agencies in public *forae*. Also, it does not appear that the Application was signed by the landowners. See attached list of owners of record.

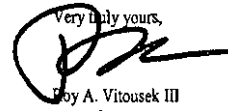
It is respectfully requested that the Planning Department either defer action on the Application or deny the Application pending a resolution of issues relative to the EIS and the land use classification of the subject property.

MLRA requests that the Planning Department provide MLRA with written notice of its decision relative to the Application to the undersigned at the following address:

Roy A. Vitousek III  
Cades Schutte LLP  
75-170 Hualalai Road, Suite B-303  
Kailua-Kona, Hawaii 96740

As always, if you have questions or require additional information, please contact me at (808) 329-5811 or [rvitousek@cades.com](mailto:rvitousek@cades.com).

Very truly yours,



Roy A. Vitousek III  
for  
CADES SCHUTTE  
A Limited Liability Law Partnership

RAV:bah  
encl.  
cc: Sandie Patton, MLRA

EXHIBIT 3-A



8.4 EXHIBITS

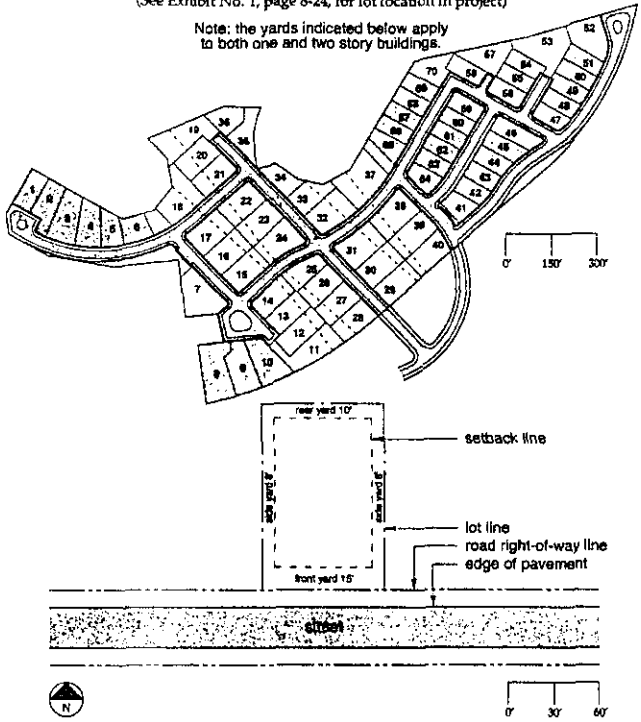
<u>Exhibit Number</u>	<u>Page No.</u>
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**Exhibit 2: Yard Designation**  
 Variance Request - Zoning Code

**Request:**  
 The Petitioner request the front, rear, and side yards be designated as indicated below for lots 1, 2, 3, 4, 5, 6, 8, 9, 10, 42, 43, 44, 45, 48, 49, 50, 51, 54, 55, 60, 61, 62, 63, 65, 66, 67, 68 and 69.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.

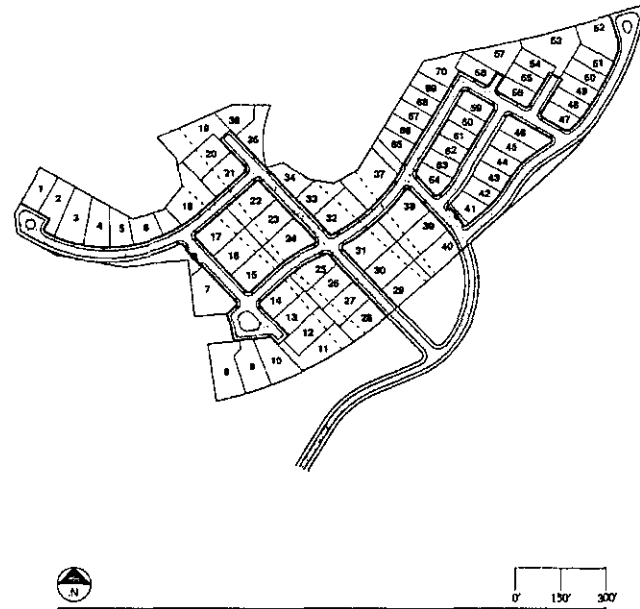


8-25

EXHIBIT 6

**Exhibit 1: Yard Designation**  
 Variance Request - Zoning Code

**Request:**  
 The Petitioner request the yards be designated as indicated in Exhibits 1 to 14. Below is the reference site plan indicating lot location and lot number for referral to exhibits 2 to 14:



8-24

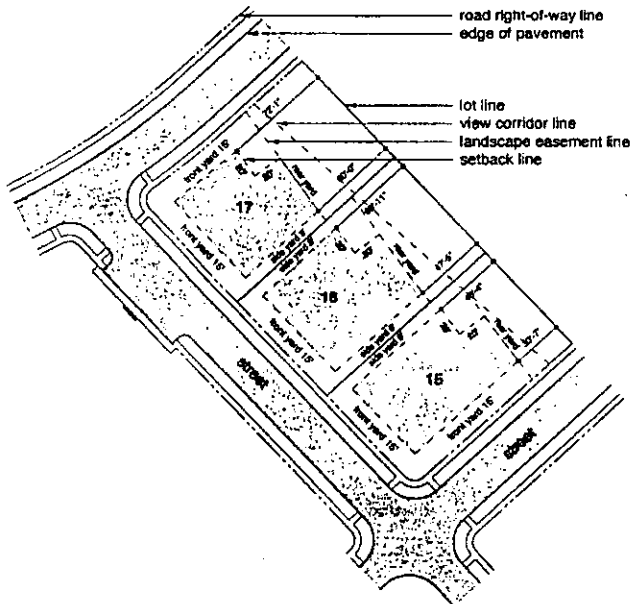
EXHIBIT 5

### Exhibit 4: Yard Designation Variance Request - Zoning Code

**Request:**  
The Petitioner request the front, rear, and side yards be designated as indicated below for lots 15, 16, and 17.

(See Exhibit No. 1, page 8-24, for lot location in project)

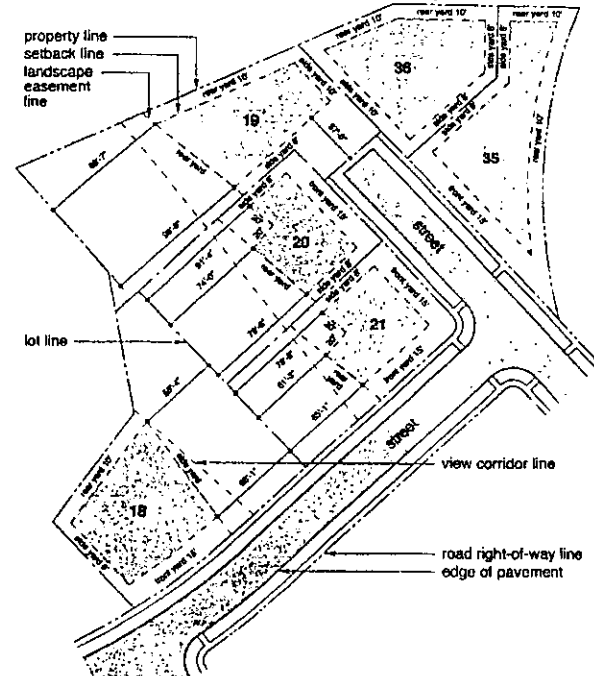
Note: the yards indicated below apply to both one and two story buildings.



### Exhibit 3: Yard Designation Variance Request - Zoning Code

**Request:**  
The Petitioner request the front, rear, and side yards be designated as indicated below for lots 18, 19, 20, 21, 35 and 36.

(See Exhibit No. 1, page 8-24, for lot location in project)



Note: the yards indicated above apply to both one and two story buildings.

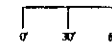


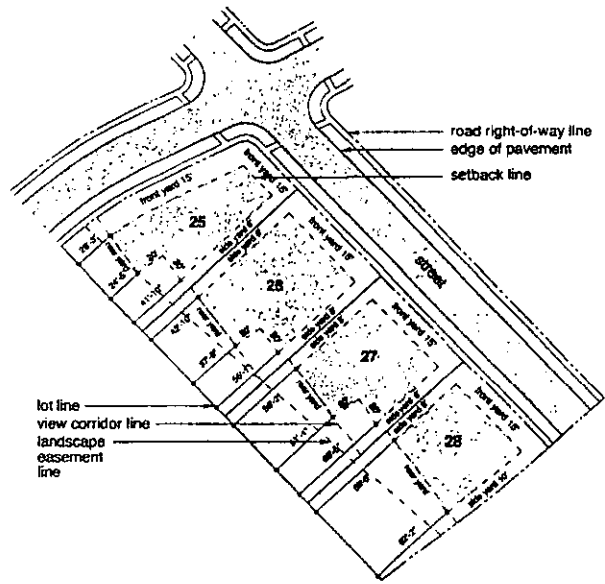
EXHIBIT 10

### Exhibit 6: Yard Designation Variance Request - Zoning Code

**Request:**  
The Petitioner request the front, rear, and side yards be designated as indicated below for lots 25, 26, 27 and 28.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.



8-29

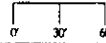
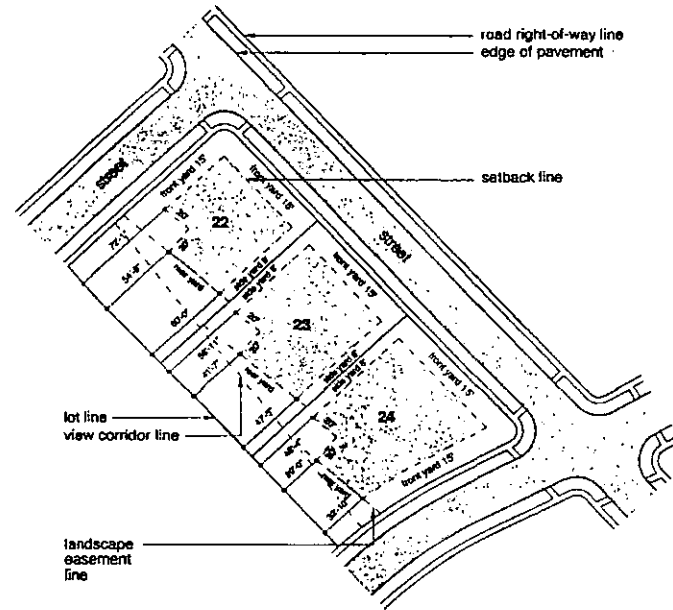
EXHIBIT 9

### Exhibit 5: Yard Designation Variance Request - Zoning Code

**Request:**  
The Petitioner request the front, rear, and side yards be designated as indicated below for lots 22, 23 and 24.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.



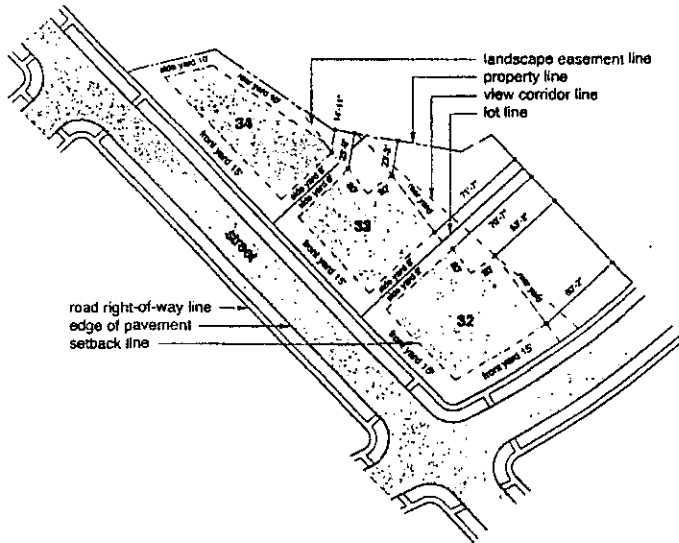
8-28

**Exhibit 8: Yard Designation**  
 Variance Request - Zoning Code

**Request:**  
 The Petitioner request the front, rear, and side yards be designated as indicated below for lots 32, 33 and 34.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.



8-31

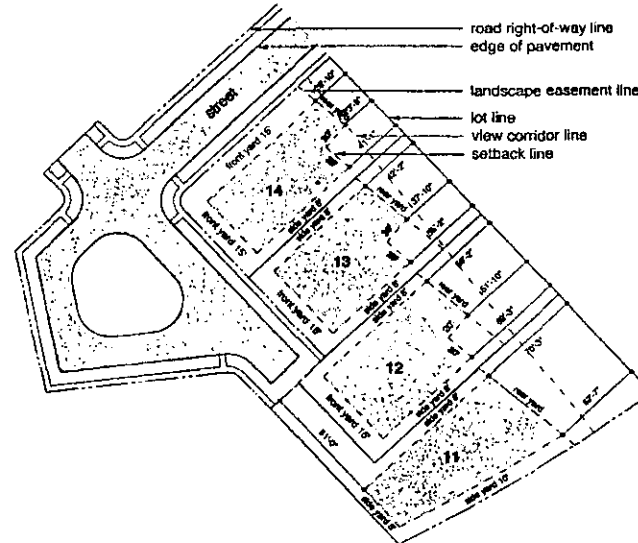
EXHIBIT 12

**Exhibit 7: Yard Designation**  
 Variance Request - Zoning Code

**Request:**  
 The Petitioner request the front, rear, and side yards be designated as indicated below for lots 11, 12, 13, and 14.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.



8-30

EXHIBIT 11

### Exhibit 10: Yard Designation Variance Request - Zoning Code

**Request:**  
The Petitioner request the front, rear, and side yards be designated as indicated below for lots 37, 38, 39, 40, 41, and 64.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.

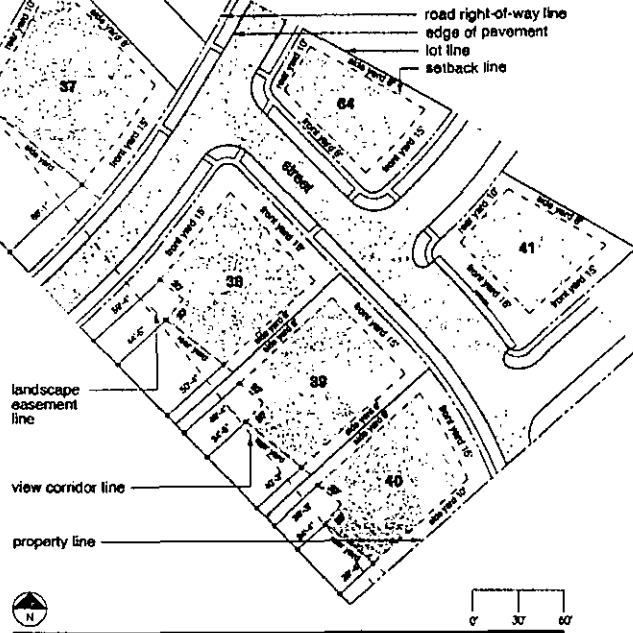


EXHIBIT 14

### Exhibit 9: Yard Designation Variance Request - Zoning Code

**Request:**  
The Petitioner request the front, rear, and side yards be designated as indicated below for lots 29, 30, and 31.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.

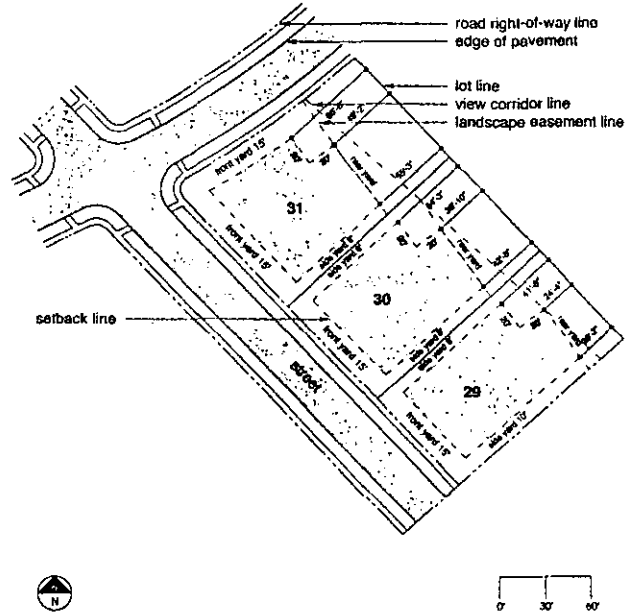


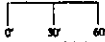
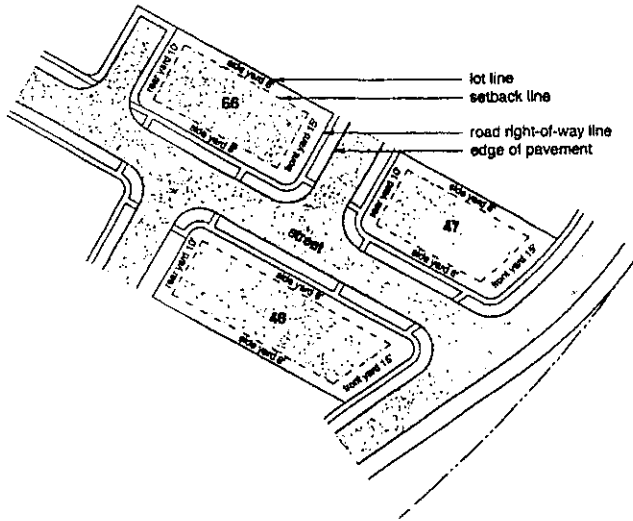
EXHIBIT 13

**Exhibit 12: Yard Designation**  
 Variance Request - Zoning Code

**Request:**  
 The Petitioner request the front, rear, and side yards be designated as indicated below for lots 46, 47 and 56.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.



8-35

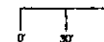
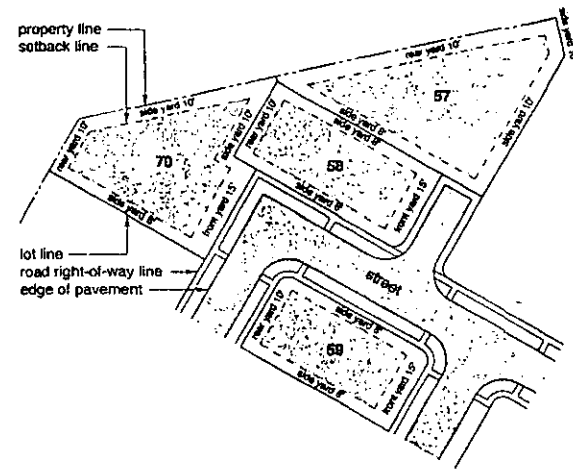
EXHIBIT 16

**Exhibit 11: Yard Designation**  
 Variance Request - Zoning Code

**Request:**  
 The Petitioner request the front, rear, and side yards be designated as indicated below for lots 57, 58, 59 and 70.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.



8-34

EXHIBIT 15

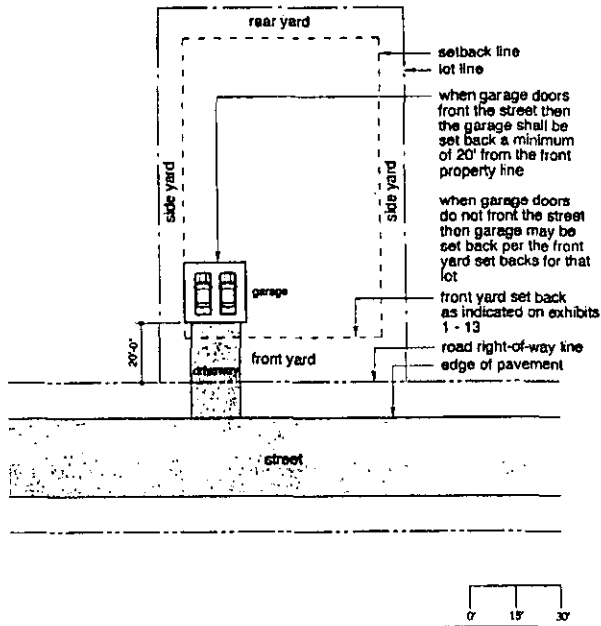
EXHIBIT 18

### Exhibit 14: Yard Designation Variance Request - Zoning Code

**Request:**  
The Petitioner request the front yard setback be a minimum of twenty feet for garages where the garage door is facing the street. This shall apply for all lots.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.



8-37

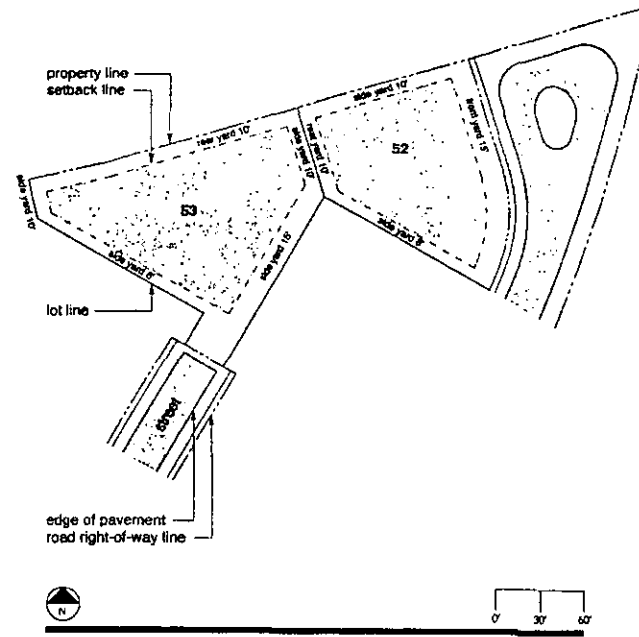
EXHIBIT 17

### Exhibit 13: Yard Designation Variance Request - Zoning Code

**Request:**  
The Petitioner request the front, rear, and side yards be designated as indicated below for lots 52 and 53.

(See Exhibit No. 1, page 8-24, for lot location in project)

Note: the yards indicated below apply to both one and two story buildings.



8-36



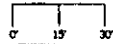
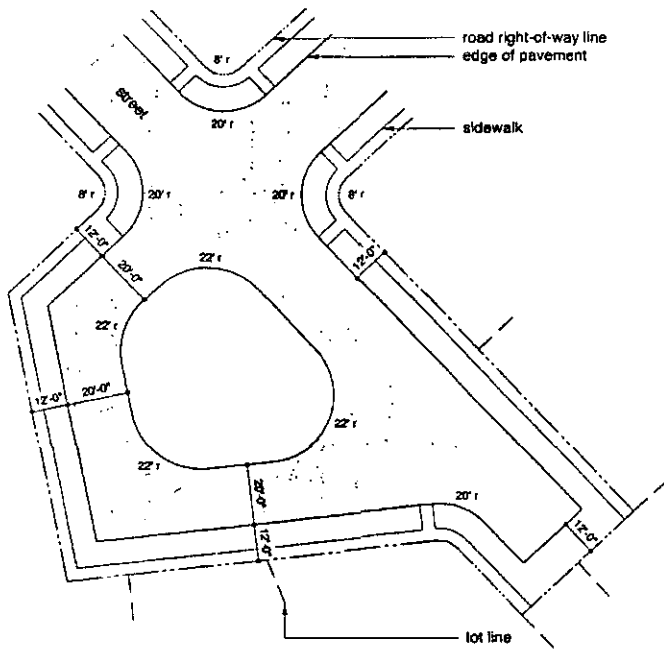


EXHIBIT 22

### Exhibit 18: Intersection Angles; Corner Radius Variance Request - Subdivision Code

**Request:**  
The Petitioner request the corner radius at the street intersections be as indicated below:

(See Exhibit No. 15, page 8-38, for location in project)



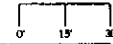
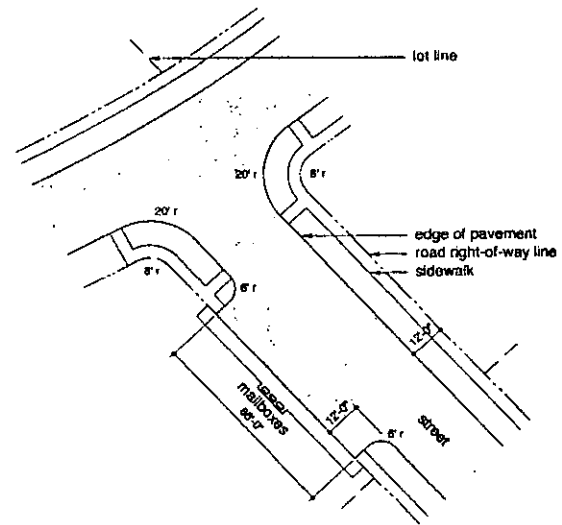
8-41

EXHIBIT 21

### Exhibit 17: Intersection Angles; Corner Radius Variance Request - Subdivision Code

**Request:**  
The Petitioner request the corner radius at the street intersections be as indicated below:

(See Exhibit No. 15, page 8-38, for location in project)



8-40

EXHIBIT 24

### Exhibit 20: Intersection Angles; Corner Radius Variance Request - Subdivision Code

**Request:**  
The Petitioner request the corner radius at the street intersections be as indicated below:

(See Exhibit No. 15, page 8-38, for location in project)

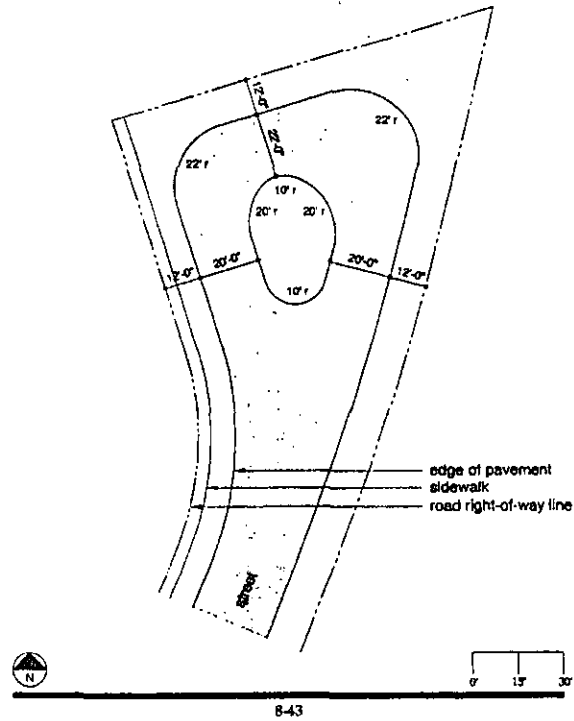


EXHIBIT 23

### Exhibit 19: Intersection Angles; Corner Radius Variance Request - Subdivision Code

**Request:**  
The Petitioner request the corner radius at the street intersections be as indicated below:

(See Exhibit No. 15, page 8-38, for location in project)

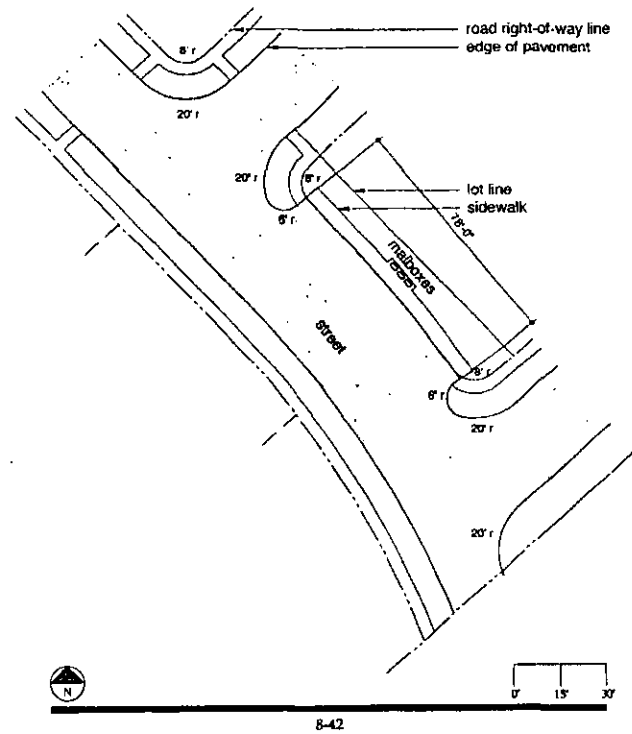
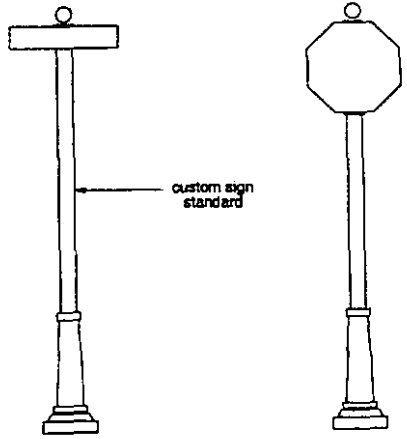


EXHIBIT 26

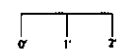
### Exhibit 22: Street Signs

Variance Request - Subdivision Code

**Request:**  
The Petitioner request that the requirements of Section 23-94 be waived in lieu of custom street name and traffic sign fixtures, which are more in keeping with the design goals of the project. Typical examples of custom fixtures that might be used in the project are as indicated below:



Street Name Sign                      Traffic Sign



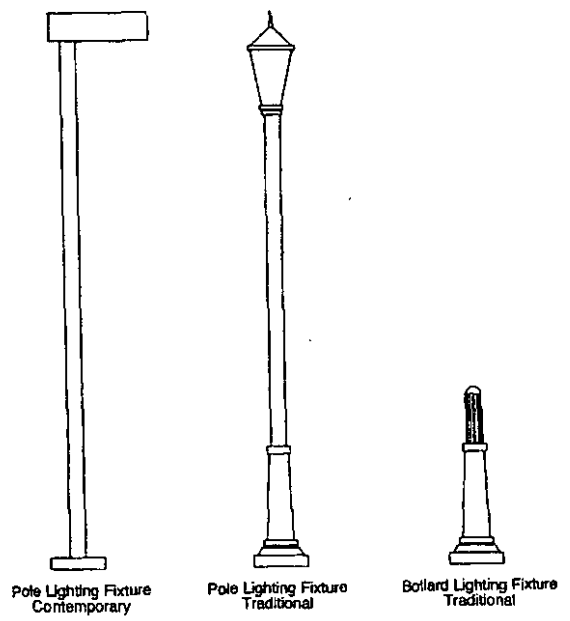
8-45

EXHIBIT 25

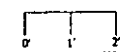
### Exhibit 21: Street Lights

Variance Request - Subdivision Code

**Request:**  
The Petitioner request that the requirements of Section 23-93 be waived in lieu of a custom street light fixture, allowing flexibility in color and housing type selection. Pole type lighting fixtures may be used at street intersections while bollard type lighting fixtures may be used to aid pedestrians. Typical examples of custom light fixtures that might be used in the project are as indicated below:



Pole Lighting Fixture Contemporary      Pole Lighting Fixture Traditional      Bollard Lighting Fixture Traditional



8-44

**Exhibit 24: Right of Way Improvement**  
 Variance Request - Subdivision Code

**Request:**  
 The Petitioner request that the requirements of Section 23-95 be waived to allow design flexibility in the treatment of the right of way areas as indicated below:

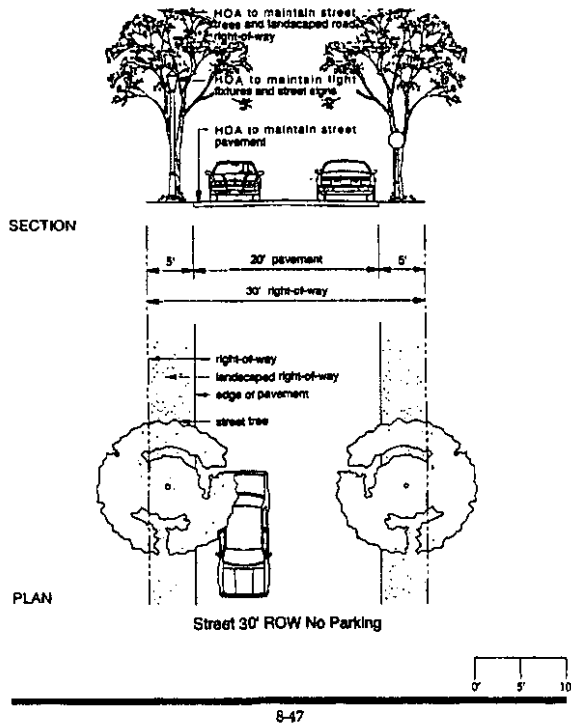


EXHIBIT 28

**Exhibit 23: Right of Way Improvement**  
 Variance Request - Subdivision Code

**Request:**  
 The Petitioner request that the requirements of Section 23-95 be waived to allow design flexibility in the treatment of the right of way areas as indicated below:

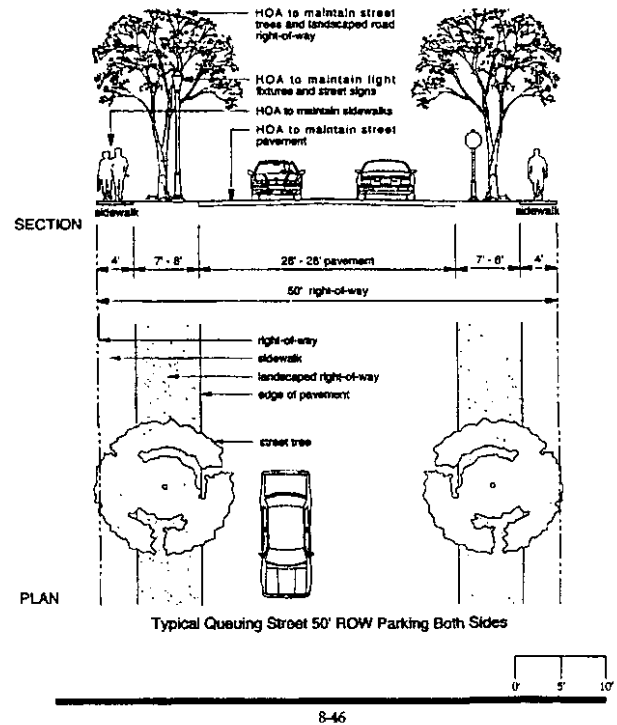


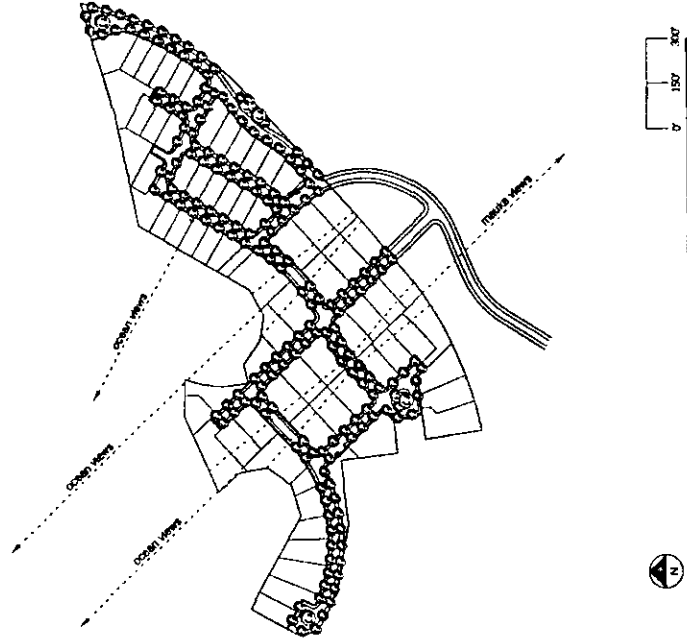
EXHIBIT 27

**10.1 LIST OF FIGURES**

No. 1 Master Plan Concept.....10-3  
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No. 3 Petition Area.....10-5  
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No. 7 Mail Station .....10-9  
No. 8 Vehicular Circulation .....10-10  
No. 9 Street Character.....10-11  
No. 10 Street Character.....10-12

**Figure 1: Master Plan Concept**

For detailed drawings of the master plan see attached 11"x17" project presentation drawings sheets A-1, A-2, A-3 and A-4.

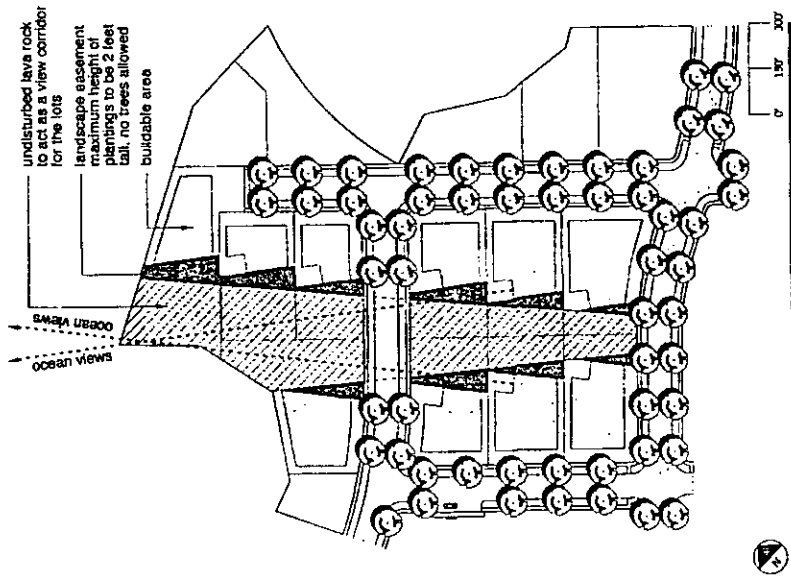


10-3

**EXHIBIT 30**

**Figure 2: View Corridors**

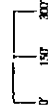
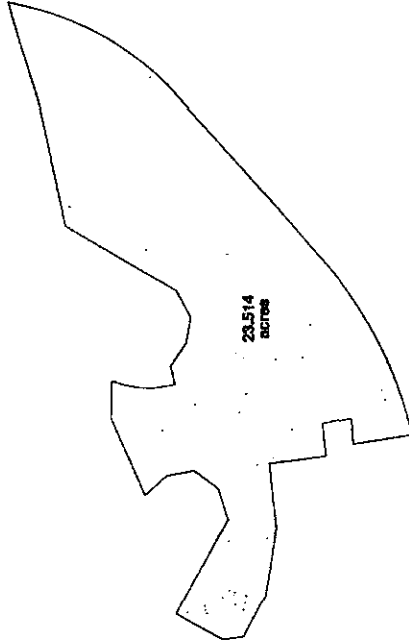
For detailed drawings of the master plan see attached 11"x17" project presentation drawings sheets A-1, A-2, A-3 and A-4.



10-4

**EXHIBIT 31**

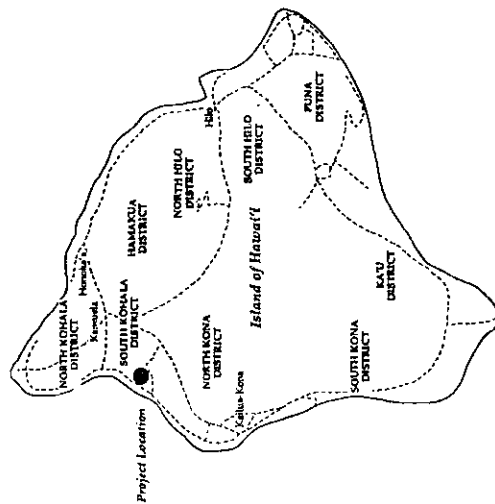
Figure 3: Petition Area



10-5

**EXHIBIT 32**

Figure 4: Project Location

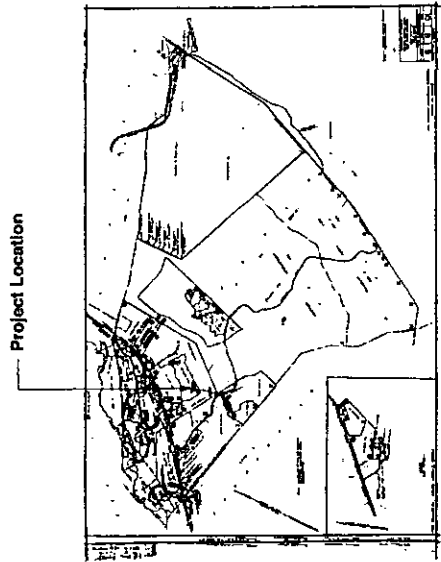


10-6

**EXHIBIT 33**



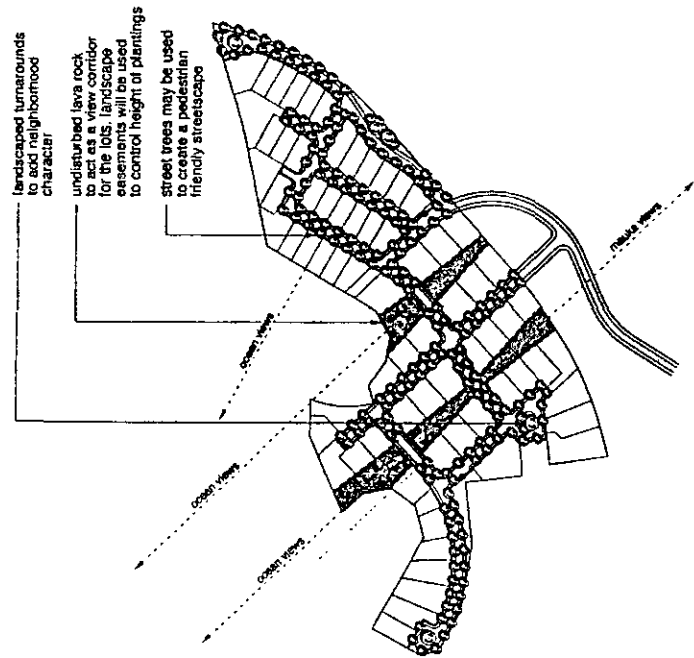
Figure 5: Project Location



10-7

EXHIBIT 34

Figure 6: Landscape Theme



10-8

EXHIBIT 35

EXHIBIT 37

Figure 8: Vehicular Circulation

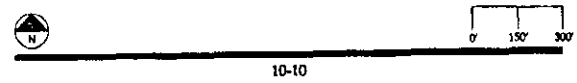
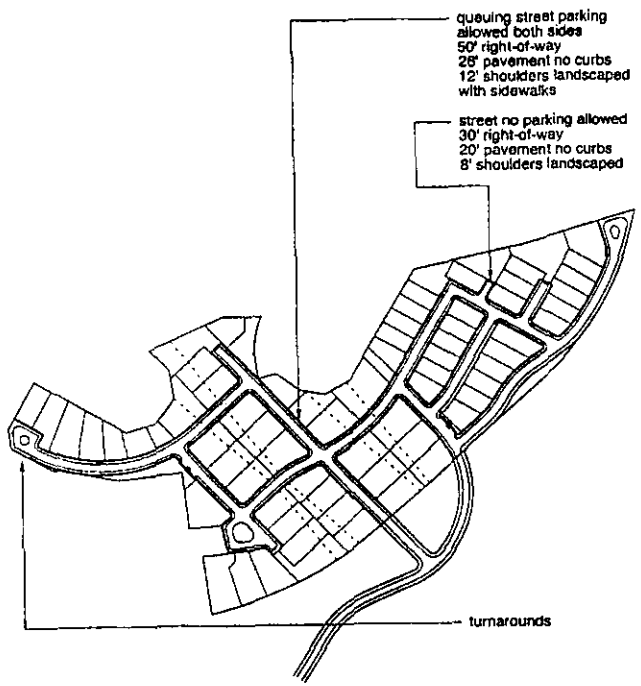


EXHIBIT 36

Figure 7: Mail Station

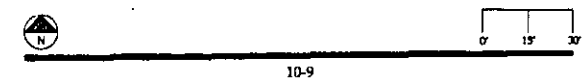
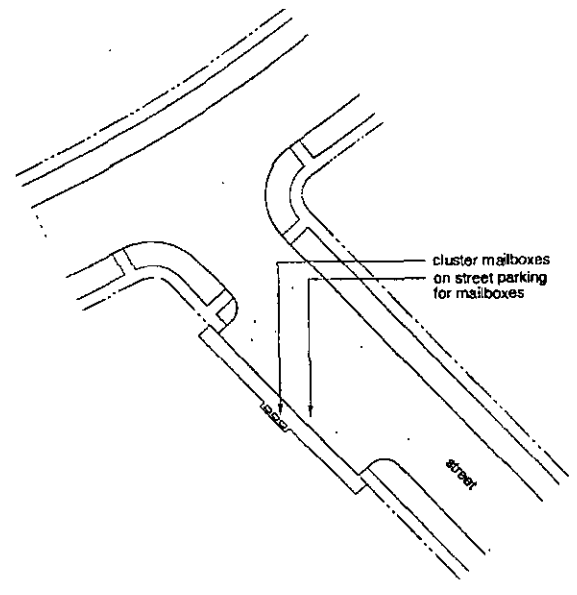


EXHIBIT 39

Figure 10: Street Character

Comment:  
The design intent of the streetscape is to create a pedestrian oriented and neighborhood friendly "sense of place".

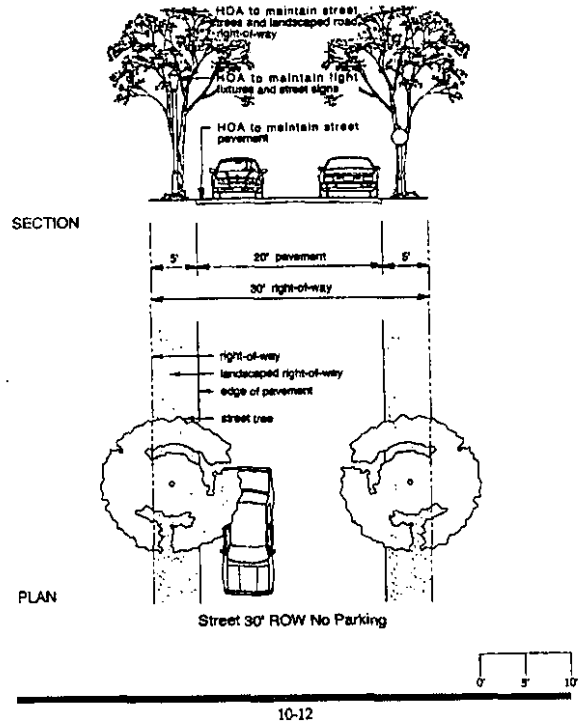
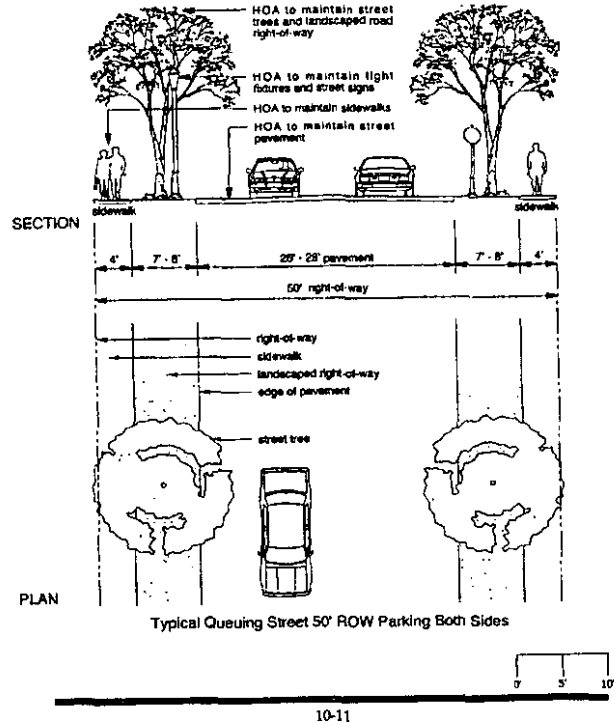


EXHIBIT 38

Figure 9: Street Character

Comment:  
The design intent of the streetscape is to create a pedestrian oriented and neighborhood friendly "sense of place".



William P. Kenoi  
Mayor



Duane Kanuha  
Director

Bobby Command  
Deputy Director

West Hawai'i Office  
74-5044 Ane Keohokalole Hwy  
Kailua-Kona, Hawai'i 96740  
Phone (808) 323-4770  
Fax (808) 327-3563

**County of Hawai'i**  
**PLANNING DEPARTMENT**

East Hawai'i Office  
101 Pauahi Street, Suite 3  
Hilo, Hawai'i 96720  
Phone (808) 961-8288  
Fax (808) 961-8742

January 30, 2014

Mr. Michael J. Riehm, A.I.A.  
Riehm Owensby Planners Architects  
P.O. Box 390747  
Kailua-Kona, Hawai'i 96739

Dear Mr. Riehm:

**SUBJECT: RESCISSION OF APPROVAL**

**Application: PLANNED UNIT DEVELOPMENT - PUD-11-000020**  
**Applicant: RIEHM OWENSBY PLANNERS ARCHITECTS**  
**Owners: AINA LE'A, LLC**  
**Request: PROPOSED PUD: HO'OLEI**  
**Tax Map Key: 6-8-001:036**

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In light of Third Circuit Court Judge Elizabeth Strance's ruling of March 28, 2013 that compliance with Hawai'i Revised Statutes (HRS) Chapter 343 was inadequate, and considering that there has been no action relative to compliance with redoing or supplementing the EIS, the Planning Director hereby rescinds the approval of PUD-11-000020 and deems said approval null and void.

Should there be any questions regarding this; feel free to contact Jonathan Holmes of this department.

Sincerely,

Duane Kanuha  
Planning Director

JRH:nci

P:\Admin Permits Division\PUD\2011\PUD-11-000020 Aina Le'a Ho'olei\Rescission.doc

Mr. Michael J. Riehm, A.I.A.  
Riehm Owensby Planners Architects  
Page 2  
January 30, 2014

xc: Department of Public Works, Engineering (Hilo and Kona)  
Department of Water Supply  
Department of Environmental Management  
Fire Department  
Police Department  
  
SUB-11-001070  
  
Aina Le'a, LLC  
P.O. Box 383129  
Waikoloa, HI 96738  
  
Roy A. Vitousek III  
Cades Shutte  
75-170 Hualālai Road, Suite B-303  
Kailua-Kona, HI 96740  
  
West Hawai'i Planning Office  
SKCDP Planner (via e-mail)  
GIS Section, G. Bailado (via e-mail)  
Bill Brilhante, Corporation Counsel  
Board of Appeals