

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII
BUREAU OF CONVEYANCES

DOCUMENT NO. — Doc A-68451166A thru A-68451166C
DATE - TIME — September 28, 2018 3:29 PM

LAND COURT SYSTEM

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Return by Mail Pickup To:

Cades Schutte LLP
Attention: Richard Kiefer, Esq.
1000 Bishop Street, Suite 1200
Honolulu, Hawaii 96813

TITLE OF DOCUMENT:

DECLARATION OF OBLIGATIONS AND RESTRICTIONS

PARTIES TO DOCUMENT:

DECLARANT: MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation

TAX MAP KEY(S): (2) 4-2-010: 001 through 063

(This document consists of 15 pages.)

DECLARATION OF OBLIGATIONS AND RESTRICTIONS

THIS DECLARATION OF OBLIGATIONS AND RESTRICTIONS (this "Declaration") is made effective SEPTEMBER 25, 2018, by MAUI LAND & PINEAPPLE COMPANY, INC., a Hawaii corporation ("Declarant"), whose principal place of business is 200 Village Road, Lahaina, Hawaii 96761.

RECITALS

A. Declarant, as the then-owner of Lots 1 through 63 of the "Mahana Estates Subdivision" as more particularly described in Exhibit A attached hereto and made a part hereof (collectively, the "Lots"), recorded that certain Supplement to Community Charter for Kapalua Mauka (Imposing Additional Obligations and Restrictions for Mahana Estates) dated August 28, 2009, recorded in the Bureau of Conveyances of the State of Hawaii ("Bureau") as Document No. 2009-146221 (the "Supplement"), which document imposed certain obligations and restrictions against the Lots in the subdivision project known as "Mahana Estates" ("Project").

B. Declarant conveyed all of the Lots to SMC MAHANA LLC, a Hawaii limited liability company ("SMC") by Warranty Deed recorded September 23, 2009 in the Bureau as Document No. 2009-146222, and SMC is the current owner, in fee simple, of all of the Lots.

C. Concurrently with the recordation of this Declaration, Declarant and SMC will record a cancellation of the Supplement in the Bureau. Declarant and SMC expressly intend for the terms and conditions of this Declaration to replace the terms and conditions of the Supplement.

NOW, THEREFORE, the Declarant hereby declares that the Lots shall be held, sold, conveyed, encumbered, owned, leased, occupied and improved subject to the following obligations, restrictions and prohibitions, all of which shall run with and encumber the Lots and shall be binding upon all persons having or who acquire any right, title, or interest in and to any Lot, or any portion of or interest in the Project, and inure to the benefit of Declarant and SMC:

1. Building Height Limits on Certain Lots. In addition to the building height restrictions that are provided for under the Charter, the Maui County Code, or any other applicable law, Lots 25, 26, and 27 as depicted on the map attached hereto as Exhibit B are lots having a one-story height restriction (that is, a twenty-five (25) foot maximum height limit as defined by the Maui County Code.).

2. Landscaping Obligations and Restrictions on Certain Lots. Owners of certain lots within the Project, specifically, Lots 1, 2, 3, 6, 7, 8, 18, 19, 20, and 21, are obligated to develop and maintain a mixture of tall slender trees (such as Cook Pine) along with shorter, wider plantings so as to provide visual screening the Ritz Carlton property ("visual screening"). The

locations of the plantings required for visual screening are the area indicated on the map attached as Exhibit "B" to this Declaration.

3. Prohibited Land Development Activities. No lot located within the Project may be further subdivided nor may the owner of any lot within the Project seek any other land use changes, including but not limited to, filing an application for a zoning change, conditional permits, or special use permits, and the like.

4. Condominium Property Regimes. Lots located within the Project may not be submitted to condominium property regimes.

5. Private Water Systems Prohibited. Lot owners within the Project are expressly prohibited from developing a private water source on their lot to service their lot or any other lot. The term "Water System" is defined as a network of pipelines, storage, pumps, and other appurtenances, wells, or other sources developed for the purpose of furnishing a source of water supply to the lot owner's lot or any other person or property.

6. Number of Dwellings Per Lot Specifically Restricted. Notwithstanding any provision of applicable law, including but not limited to state and county laws, the maximum number of dwelling units per lot within the project shall be one (1) unit. A "dwelling unit" is defined as a room or group of rooms connected together constituting an independent housekeeping unit and containing a single kitchen. Accessory Dwellings, as defined in Maui County Code Chapter 19.35 and guest houses are not permitted on any Lot.

7. Irrigation Water System. The Project features a dual water system of potable and non-potable water lines. Water from the non-potable lines may be used only for irrigation. Installation of spigots and faucets on the non-potable lines is strictly prohibited.

8. Severability. The unenforceability, invalidity, or illegality of any provision of this Declaration shall not render the other provisions of this Declaration unenforceable, invalid, or illegal.

9. Reservation. Declarant reserves the right to make amendments to this Declaration that are required by law, by the County of Maui or State of Hawaii or any agency thereof, by a title insurance company, by a mortgage lender, or by any federal governmental agency (including the VA, HUD, FNMA and/or FHLMC).

10. Standing to Enforce this Declaration. Only Declarant and SMC, acting alone or jointly, shall have the power and authority to enforce the obligations, restrictions and prohibitions of this Declaration. Any person or entity acquiring a Lot or any portion thereof or interest therein ("**Owner**") acknowledges and agrees that Declarant and SMC have made a substantial investment in the development of the Project and as such have a substantial, continuing interest in the Project's operation and reputation so long as Declarant or SMC owns any Lot in the Project or other properties in the vicinity of the Project, and continuing thereafter. Accordingly, from and after the date hereof, Owner, by taking title thereto, for itself

and its successors and assigns, acknowledges and agrees that Declarant and SMC have standing to enforce the obligations and restrictions of this Declaration, regardless of whether Declarant or SMC own any other Lots in the Project. Owner expressly agrees that in the event of any threatened or actual violations of this paragraph Declarant shall be entitled to injunctive relief, regardless of the availability or sufficiency of other remedies. This Declaration shall be prior and superior to the lien or charge of any mortgage or deed of trust securing a loan, and to all declarations of covenants, conditions or restrictions, easements, and any other liens, encumbrances, and exceptions to title (whether contractual or otherwise) that affect the Project that are made after the date hereof. Nothing herein is intended or shall be construed to subordinate this Declaration to any subsequent declaration or other document or instrument recorded in the Bureau with respect to Lots. Any subordination of this Declaration to any other document or instrument shall be effective only upon the execution of a subordination agreement by the Declarant and SMC (or their respective successors or assigns as of the date of the execution of such a subordination agreement, as applicable), which Declarant and SMC (or their respective successors or assigns, as applicable) may or may not agree to so execute in its sole and absolute discretion.

11. Enforcement. Each Owner acquiring any interest in the Lots or any portions thereof or interest therein acknowledges and agrees that material violations of the obligations and restrictions may cause Declarant and/or SMC to suffer material injury or damage not compensable in money and that the Declarant and SMC (acting alone or jointly) shall be entitled to bring an action in equity or otherwise for specific performance to enforce compliance with the terms of this Declaration, or bring an action for an injunction to enjoin the continuance of any such breach or Default, regardless of whether the remedy of damages may be available.

12. No Third Party Beneficiaries. This Declaration is not intended, and shall not be deemed or construed, to confer any rights, power or privileges on any person or entity other than the Declarant and SMC (as to the rights specifically reserved to them in this Declaration).

13. Perpetuities. If any of the obligations and restrictions set forth herein shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

14. Effect of Invalidity. The reservations, obligations and restrictions set forth herein shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion thereof, of any such reservations, obligations and restrictions shall not affect the validity or enforceability of any other provisions hereof.

15. Attorneys' Fees. In the event of a dispute under this Declaration, the prevailing party shall be entitled to recover from the losing party all costs including reasonable attorneys' fees.

16. Governing Law; Construction. This Declaration shall be governed by laws of the State of Hawaii. Each Owner acquiring the Village Center Lot or any portion thereof or interest therein shall be deemed to have agreed that, notwithstanding any general principals of Hawaii law, all of the terms, obligations and restrictions of this Declaration shall be liberally construed, interpreted and enforced in order to implement the purposes of this Declaration as set forth above.


17. Assignment. Declarant may, without the consent or joinder of any party, assign all of its rights under this Declaration to any other party by recording an instrument memorializing such assignment in the Bureau.

18. Amendments; Waivers. This Declaration may not be amended, modified, supplemented, repealed or released, in whole or in part, without the prior written consent of Declarant and SMC. Notwithstanding the foregoing, the Declarant, with the consent of SMC, may waive any provision of this Declaration that is solely for the benefit of Declarant in its sole discretion.

[SIGNATURES FOLLOW]

IN WITNESS WHEREOF, Declarant has executed this Declaration of Obligations and Restrictions effective as of the date first set forth above.

MAUI LAND & PINEAPPLE COMPANY, INC.,
a Hawaii corporation

By 
Name: Tim T. Esaki
Its: Chief Financial Officer

JOINDER AND CONSENT

SMC, as the owner of the fee simple interest in all of the Lots in the Project, as more particularly described in Exhibit A attached hereto and made a part hereof, hereby joins in and consents to this Declaration.

SMC MAHANA LLC, a Hawaii limited liability
company

By _____
Name:
Its:

IN WITNESS WHEREOF, Declarant has executed this Declaration of Obligations and Restrictions effective as of the date first set forth above.

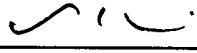
MAUI LAND & PINEAPPLE COMPANY, INC.,
a Hawaii corporation

By _____
Name: Tim T. Esaki
Its: Chief Financial Officer

JOINDER AND CONSENT

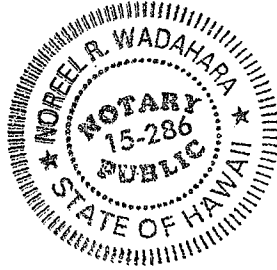
SMC, as the owner of the fee simple interest in all of the Lots in the Project, as more particularly described in Exhibit A attached hereto and made a part hereof, hereby joins in and consents to this Declaration.


SMC MAHANA LLC, a Hawaii limited liability
company

By  _____
Name: Nan Chul Shin
Its: Manager

STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 30th day of August, 2018, before me appeared Tim T. Esaki, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.






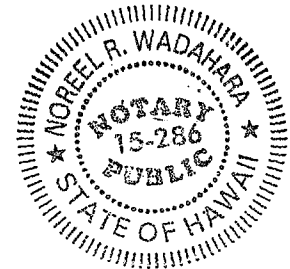
Notary Public, State of Hawaii

Printed Name: Noreel R. Wadahara

My commission expires: August 9, 2019

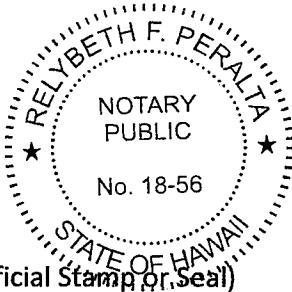
(Official Stamp or Seal)

<u>NOTARY CERTIFICATION STATEMENT</u>	
Document Identification or Description: Declaration of Obligations and Restrictions	
Doc. Date: <u>Undated</u> or <input type="checkbox"/> undated at the time of execution	
No. of Pages: <u>10</u>	Jurisdiction: First Circuit (in which notarial act is performed)
 _____ Signature of Notary	<u>August 30, 2018</u> Date of Notarization and Certification Statement
<u>Noreel R. Wadahara</u> Printed Name of Notary	(Official Stamp or Seal)



STATE OF HAWAII)
) SS:
CITY & COUNTY OF HONOLULU)

On this 24th day of September, 2018, before me appeared Nan Chul Shin, to me personally known, who, being by me duly sworn or affirmed did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.



Relybeth F. Peralta
Notary Public, State of Hawaii

Printed Name: RELYBETH F. PERALTA

My commission expires: 12/25/2022

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Declaration of Obligations and Restrictions

Doc. Date: Undated or undated at the time of execution

No. of Pages: 8 Jurisdiction: First Circuit
(in which notarial act is performed)

Relybeth F. Peralta 09/24/2018
Signature of Notary Date of Notarization and Certification Statement

RELYBETH F. PERALTA
Printed Name of Notary

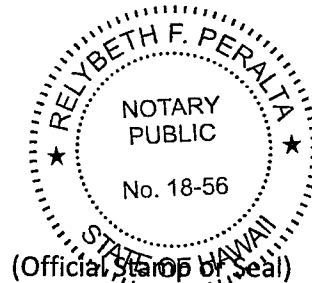


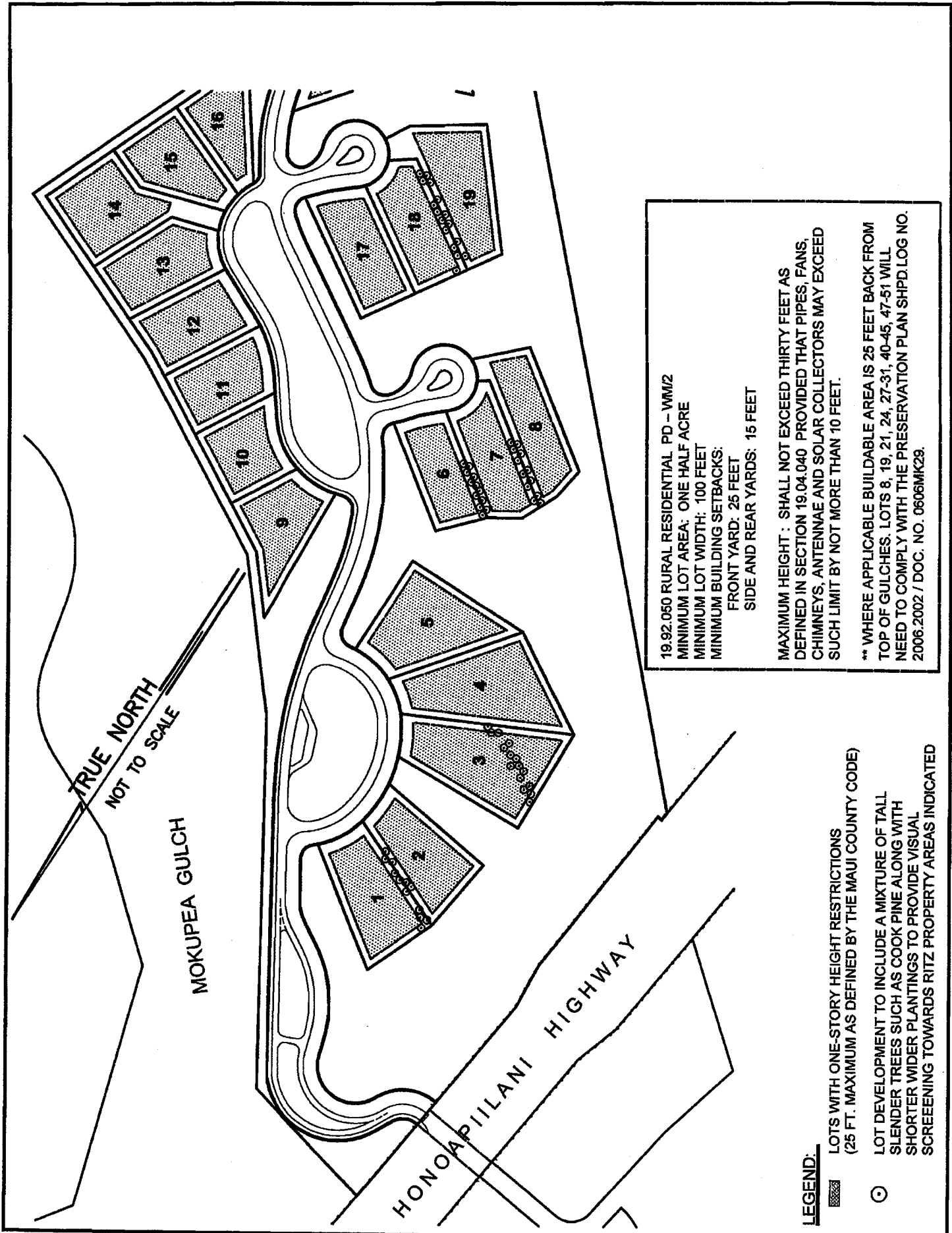
EXHIBIT A

All of those certain parcels of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 2236, Land Commission Award Number 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21), situate, lying and being on the Southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3) at Honokahua, Lahaina, Island and County of Maui, State of Hawaii, being the following lots of the "MAHANA ESTATES SUBDIVISION", as shown on map prepared by Reed M. Ariyoshi, Licensed Professional Land Surveyor with Warren S. Unemori - Engineering, Inc., approved by the Director of Public Works, Dated November 15, 2006, last revised on October 4, 2016 (Subdivision File No. 4.913), approved on February 8, 2017, and containing the respective areas as shown below:

Lot No.	Area
1	1.302
2	1.019
3	1.414
4	1.114
5	1.593
6	0.874
7	1.045
8	1.191
9	1.447
10	0.706
11	0.767
12	0.818
13	0.854
14	1.057
15	0.744
16	1.033
17	1.211
18	1.076
19	1.107
20	1.294
21	1.517
22	1.665
23	1.374
24	1.752
25	1.536
26	1.700
27	2.485
28	1.700
29	2.485
30	2.557
31	2.849
32	1.651
33	1.884
34	3.653
35	3.884
36	3.036
37	2.379
38	2.455
39	1.585
40	4.299

Lot No.	Area
41	2.277
42	2.118
43	1.747
44	1.992
45	2.3659
46	1.400
47	1.248
48	1.806
49	1.999
50	1.506
51	2.035
52	0.927 ac.
53	12.014 ac.
54	0.021 ac.
55	6.520 ac.
56	12.096 ac.
57	1.475 ac.
58	1.821 ac.
59	0.506 ac.
60	0.508 ac.
61	1.309 ac.
62	0.124 ac.
63	0.573 ac.

EXHIBIT B



TRUE NORTH
NOT TO SCALE

MOKUPEA GULCH

HONOAPIILANI HIGHWAY

19.92.050 RURAL RESIDENTIAL PD - WM1/2
 MINIMUM LOT AREA: ONE HALF ACRE
 MINIMUM LOT WIDTH: 100 FEET
 MINIMUM BUILDING SETBACKS:
 FRONT YARD: 25 FEET
 SIDE AND REAR YARDS: 15 FEET

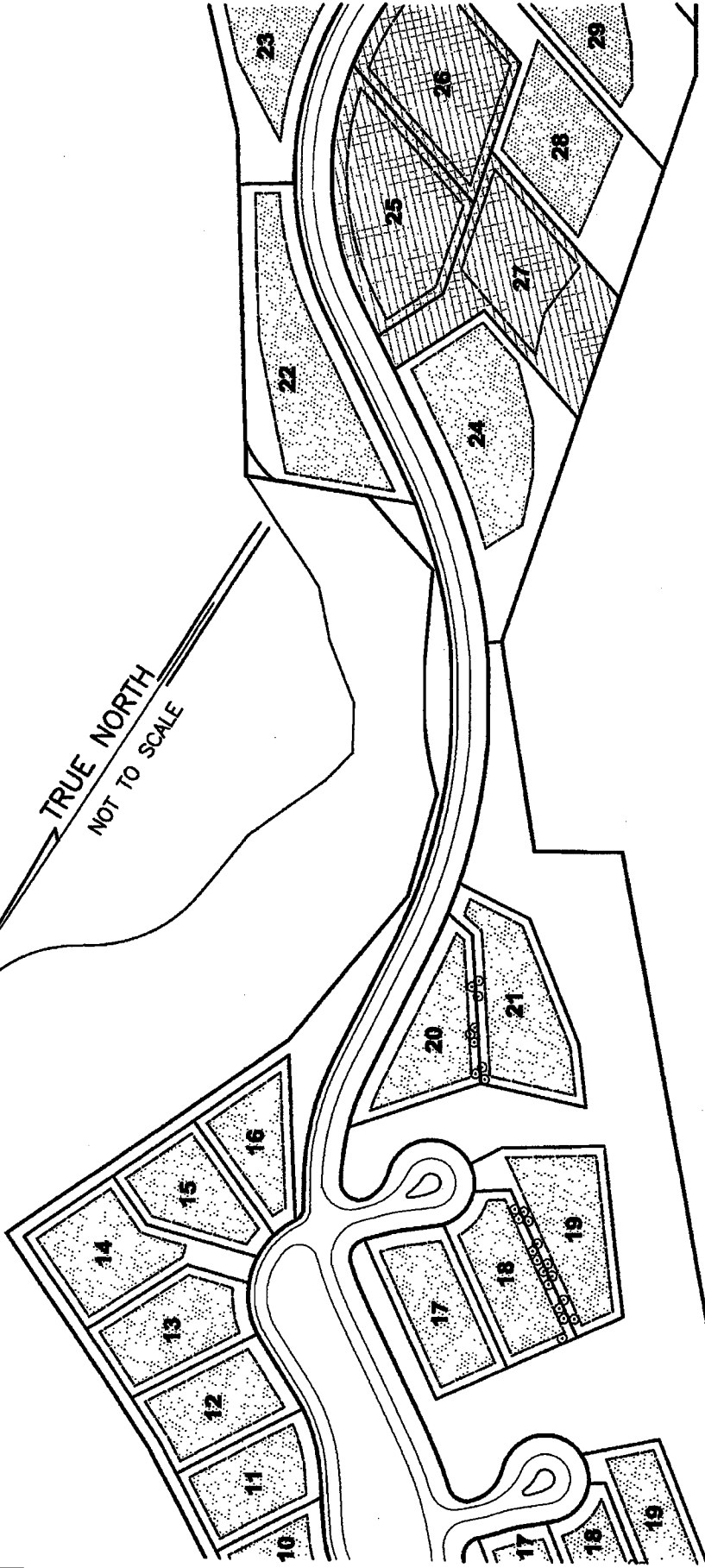
MAXIMUM HEIGHT : SHALL NOT EXCEED THIRTY FEET AS DEFINED IN SECTION 19.04.040 PROVIDED THAT PIPES, FANS, CHIMNEYS, ANTENNAE AND SOLAR COLLECTORS MAY EXCEED SUCH LIMIT BY NOT MORE THAN 10 FEET.

** WHERE APPLICABLE BUILDABLE AREA IS 25 FEET BACK FROM TOP OF GULCHES. LOTS 8, 19, 21, 24, 27-31, 40-45, 47-51 WILL NEED TO COMPLY WITH THE PRESERVATION PLAN SHPD.LOG NO. 2006.2002 / DOC. NO. 0606MK29.

LEGEND:

- ▨ LOTS WITH ONE-STORY HEIGHT RESTRICTIONS (25 FT. MAXIMUM AS DEFINED BY THE MAUI COUNTY CODE)
- LOT DEVELOPMENT TO INCLUDE A MIXTURE OF TALL SLENDER TREES SUCH AS COOK PINE ALONG WITH SHORTER WIDER PLANTINGS TO PROVIDE VISUAL SCREENING TOWARDS RITZ PROPERTY AREAS INDICATED

TRUE NORTH
NOT TO SCALE





19.92.060 RURAL RESIDENTIAL PD - WMI/2
 MINIMUM LOT AREA: ONE HALF ACRE
 MINIMUM LOT WIDTH: 100 FEET
 MINIMUM BUILDING SETBACKS:
 FRONT YARD: 25 FEET
 SIDE AND REAR YARDS: 15 FEET

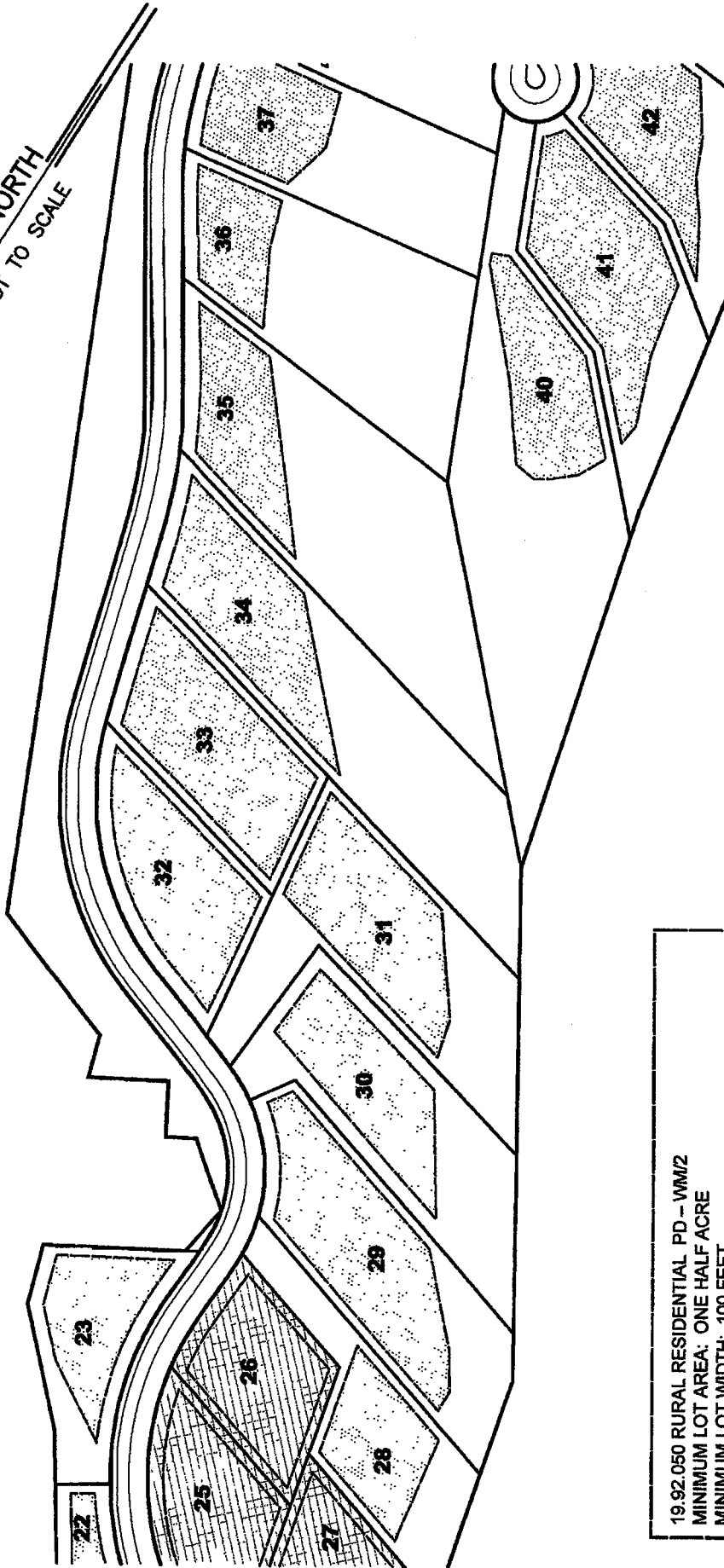
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TRUE NORTH
NOT TO SCALE



19.92.050 RURAL RESIDENTIAL PD - VMM/2
 MINIMUM LOT AREA: ONE HALF ACRE
 MINIMUM LOT WIDTH: 100 FEET
 MINIMUM BUILDING SETBACKS:
 FRONT YARD: 25 FEET
 SIDE AND REAR YARDS: 15 FEET

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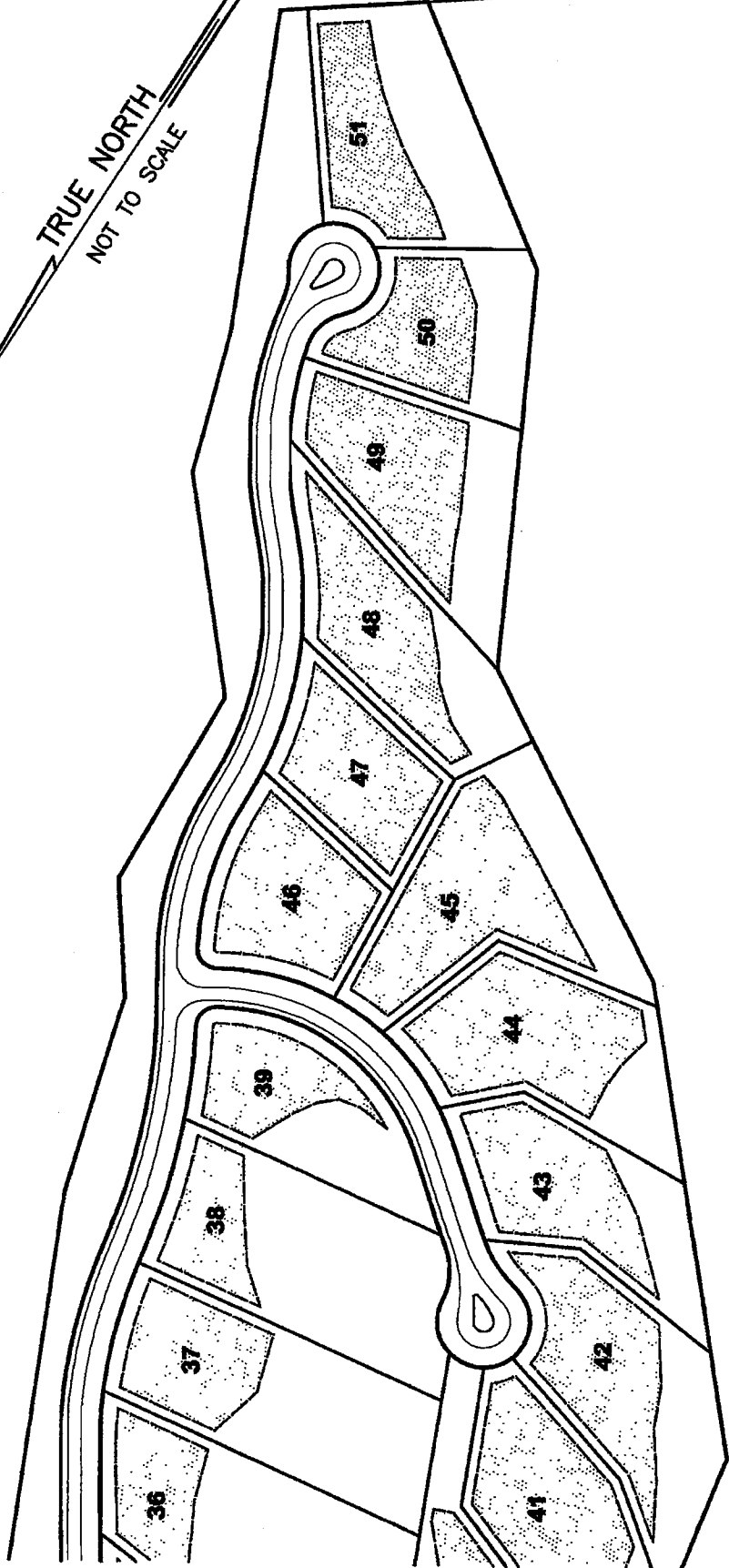


LOTS WITH ONE-STORY HEIGHT RESTRICTIONS
(25 FT. MAXIMUM AS DEFINED BY THE MAUI COUNTY CODE)



LOT DEVELOPMENT TO INCLUDE A MIXTURE OF TALL
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SHORTER WIDER PLANTINGS TO PROVIDE VISUAL
SCREENING TOWARDS RITZ PROPERTY AREAS INDICATED

TRUE NORTH
NOT TO SCALE



19.92.050 RURAL RESIDENTIAL PD - WM2
 MINIMUM LOT AREA: ONE HALF ACRE
 MINIMUM LOT WIDTH: 100 FEET
 MINIMUM BUILDING SETBACKS:
 FRONT YARD: 25 FEET
 SIDE AND REAR YARDS: 15 FEET

MAXIMUM HEIGHT : SHALL NOT EXCEED THIRTY FEET AS
 DEFINED IN SECTION 19.04.040 PROVIDED THAT PIPES, FANS,
 CHIMNEYS, ANTENNAE AND SOLAR COLLECTORS MAY EXCEED
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