

REQUEST FOR LEGAL SERVICES

Date: August 28, 2018
From: Robert Carroll, Chair
Land Use Committee

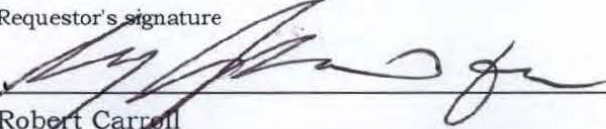
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jeffrey Ueoka, Esq.

Subject: AFFORDABLE HOUSING PROJECTS (CHAPTER 201H, HAWAII REVISED STATUTES) (WAIKAPU DEVELOPMENT VENTURE LLC AFFORDABLE WORKFORCE HOUSING PROJECT (WAILUKU)) (LU-2(4))

Background Data: The attached revised proposed resolution approving the project with modifications incorporates changes made at the August 22, 2018 Committee meeting, reconvened on August 28, 2018. Attached are a "track changes" version of Exhibits "A" and "B," and a "clean" version of the entire revised proposed resolution for your ease of reference. A hard copy is required with your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Robert Carroll	Contact Person <u>Carla Nakata</u> (Telephone Extension: 7659)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 29, 2018, 4:30 p.m.
REASON: To submit for posting on the agenda for the September 7, 2018 Council meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

MODIFICATIONS

1. Construction of the Waikapu Development Venture LLC Affordable Workforce Housing Project ("Project") shall commence within two years of the effective date of this resolution. Commencement of construction shall mean the visible start of grading, pursuant to a valid grading permit as needed for the development of the 12.5 acres upon which the 80 residential workforce housing units shall be constructed ("Property"). Waikapu Development Venture LLC shall act in good faith and with its reasonable best efforts to complete construction of the 80 residential workforce housing units, with all related roads and infrastructure, no later than four years after the effective date of this resolution.
- ~~2. The County Department of Transportation shall approve the placement and design of a bus stop in or adjacent to the Project; approval of such placement and design shall not be unreasonably withheld. Waikapu Development Venture LLC shall construct the bus stop as approved by the Department.~~
32. Project approval shall lapse and become void if the State Land Use Commission fails to approve the sale of the Property by Emmanuel Lutheran Church of Maui to Waikapu Development Venture LLC within six months after the effective date of the resolution.

lu:misc:002(4)modifications012:ajw

EXHIBIT "A"

WAIKAPU DEVELOPMENT VENTURE AFFORDABLE WORKFORCE HOUSING PROJECT EXEMPTIONS PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES.

A. EXEMPTION FROM TITLE 2, MCC, ADMINISTRATION AND PERSONNEL

1. An exemption from Chapter 2.80B, MCC, General Plan and Community Plans, shall be granted to permit the Project to proceed without obtaining a Community Plan Amendment.

B. EXEMPTIONS FROM TITLE 8, MCC, HEALTH AND SAFETY

1. An exemption from Section 8.04.040, MCC, Disposal Permits — Application and suspension, shall be granted to exempt the Project from the requirement of acquiring a *Disposal Permit*.
2. An exemption from Section 8.04.050, MCC, Disposal Charges, shall be granted to exempt the Project from *Disposal Charges*.

C. EXEMPTIONS FROM TITLE 12, MCC, STREETS, SIDEWALKS, AND PUBLIC PLACES

1. An exemption from Section 12.08.100, MCC, Standards and Specifications, shall be granted to allow driveways within the 15-foot reserve area adjacent to an intersection and allow the maximum driveway width for the duplex units to exceed twenty-two (22) feet. The new maximum driveway width for the duplex units shall be thirty-six (36) feet.
2. An exemption from Chapter 12.24A, MCC, Landscape Planting and Beautification, shall be granted to exempt the Project from compliance with the *Landscape Planting Plan* as it pertains to requiring *One (1) Tree per Residential Lot*. The Project is comprised of seventy-four (74) Residential Lots, and thus, the Landscape Planting Plan will include the planting of no less than 74 Landscape Trees. However, the Project is allowed, through this exemption, flexibility in the precise location of each tree as it may not be feasible to plant a tree in the front area of every single residential lot. Some of the trees may be planted in the Neighborhood Green or along the several pedestrian pathways leading to the Neighborhood Green.

D. EXEMPTIONS FROM TITLE 14, MCC, PUBLIC SERVICES

1. An exemption from Section 14.05.090, MCC, Fire Protection, shall be granted to exempt the Project from providing *Fire Protection* for the portions of the Property along Honoapiilani Highway.
2. ~~An exemption from Chapter 14.35, MCC, Wastewater Assessment Fees for Facility Expansion for the Wailuku/Kahului Wastewater Treatment~~

~~System, shall be granted to exempt the Project from having to pay Wastewater Assessment Fees.~~

- 3-2. An exemption from Chapter 14.76, MCC, Impact Fees for Traffic and Roadway Improvements in Wailuku-Kahului, Maui, Hawaii; shall be granted to exempt the Project from having to pay *Traffic Impact Fees* should such fees be adopted prior to issuance of building permits for the Project.

E. EXEMPTIONS FROM TITLE 16, MCC, BUILDINGS AND CONSTRUCTION

1. Exemptions from MCC Chapters 16.04C, Fire Code, 16.18B, Electrical Code, 16.20B, Plumbing Code, and 16.26B, Building Code, shall be granted to exempt the Project from *Fire, Electrical, Plumbing, and Building* permit fees, as well as inspection fees.
2. An exemption from Chapter 16.04C.160, MCC, Fire Code, as it pertains to permit fees in Subsection 1.12.8 shall be granted to exempt the Project from permit fees required by the Fire Code.
3. An exemption from Section 16.04C.440, MCC, Fire Code, as it pertains to *dimensions* in Subsection 18.2.3.6.1 shall be granted to exempt the Project from providing an *Unobstructed Width of Twenty (20) feet* for the *Interior Subdivision Roadways* (Roadways C and D) (Please refer to Exhibit 3 — Typical Section of Roadways C and D).
4. An exemption from Section 16.04C.470, MCC, Fire Code, as it pertains to Subsection 18.4.6 shall be granted to exempt the Project from providing fire protection for the portions of the property along Honoapiilani Highway.
5. An exemption from Section 16.26B.3600, MCC, Improvements to Public Streets, as it relates to *Urban Standards for Curbs and Gutters*, shall be granted for the portion of the Project adjacent to *Waiale Road* (Please refer to Exhibit 1— Typical Section of Waiale Road).

F. EXEMPTIONS FROM TITLE 18, MCC, SUBDIVISIONS

1. Exemptions from Section 18.04.030, MCC, Administration, and Section 18.16.020, MCC, Compliance, shall be granted to exempt the Project from requirements of obtaining a *Change in Zoning, and Community Plan Amendment*.
2. Exemptions from Section 18.16.050, MCC, Minimum Right-of-Way and Pavement Widths, shall be granted to allow the *Internal Subdivision Roadways* (Roadways C and D) to have a *Minimum Right-of-Way Width of Thirty-Six (36) feet and Minimum Pavement Width of Twenty (20) feet* (Please refer to Exhibit 3 — Typical Section for Roadways C and D).
3. An exemption from Section 18.16.070(A), MCC, Intersection Angles, shall be granted to allow the right-of-way lines at intersections to have a minimum corner radii of fifteen (15) feet.

4. An exemption from Section 18.16.220, MCC, Lots Size and Shape, shall be granted to allow *Lot Sizes, Widths, Shapes, and Orientation, and Minimum Building Setback Lines*, within the Project that are not consistent with, and not in conformance with the provisions of Chapter 19.31, MCC, Public/Quasi-Public District.
5. An exemption from Section 18.16.230, MCC, Lots — Minimum Sizes, shall be granted to allow Lot Sizes within the Project that are *not consistent with, and not in conformance with* the provisions of Chapter 19.31, MCC, Public/Quasi-Public District.
6. An exemption from Sections 18.20.040 and 18.20.080, MCC, as they relate to the *Urban Standards for Curbs, Gutters*, shall be granted for the portions of the Project adjacent to Waiale Road (Please refer to Exhibit 1- Typical Section of Waiale Road).
7. An exemption from Section 18.20.070, MCC, Sidewalks, shall be granted to allow the following exemptions as it relates to the *Construction of Sidewalks* along the Internal Subdivision Roadways A, B, C, and D (Please refer to Exhibits 2 and 3 — Typical Sections of proposed Internal Roadways).
 - **Roadway A** — Four (4) foot wide Concrete Sidewalks will be provided on both sides of portions of *Roadway A*; and the *Sidewalks will be in compliance with applicable Americans with Disabilities Act ("ADA ") requirements*.
 - **Roadway B** — Five (5) foot wide Concrete Sidewalks will be provided on one side of portions of *Roadway B*; and the *Sidewalks will be in compliance with all ADA requirements*.
 - **Roadways C and D** — The Project is exempt from constructing *Sidewalks on both sides of the Internal Subdivision Roadways C and D*.
8. An exemption from Chapter 18.40, MCC, Guidelines for Acceptance, shall be granted to allow the County to accept the subdivision roadways and utilities located within the subdivision roadways based on the exemptions granted herein, including but not limited to, exemption C.1 relating to the standards and specifications of driveways.

G. EXEMPTIONS FROM TITLE 19, MCC, ZONING

1. An exemption from Chapter 19.31, MCC, Public/Quasi-Public District, shall be granted to permit the development and use of the subject parcel for single-family and two-family (duplex) residential purposes. Permitted uses shall be based on Chapter 19.08, MCC, Residential District, and Chapter 19.10, MCC, Two-family (Duplex) District. The Project shall be exempt from all Development Design Standards set forth in Chapter 19.31, MCC. Further, this exemption shall allow the subdivision of the property in the plat configuration as generally shown in the Project Site Plan and Exhibit 4. The following Zoning Standards shall apply to the Project:

PERMITTED USES: *Single-Family and Two-Family (Duplex) Residential Units, as well as accessory buildings located on the same lot, the use of which is customary, incidental, usual, and necessary to that of the main building or to the use of the land-; provided that Bed and Breakfast Homes, Short-Term Rental Homes, and other rentals for a period of less than 180 days shall not be permitted.*

MINIMUM LOT SIZE: 3,000 Square feet

MAXIMUM HEIGHT: No building shall exceed two (2) stories or thirty (30) feet in height.

MINIMUM LOT WIDTH: Forty (40) feet

- YARDS (BUILDING SETBACKS): Yards (building setbacks) to be as follows:
 - SINGLE-FAMILY AND TWO-FAMILY (DUPLEX) DWELLINGS:
 - Front Yard: Ten (10) feet minimum
 - Side Yard: Single-story is six (6) feet minimum; and two-story is ten (10) feet minimum; exterior stairs and landing decks accessing second story duplex units may extend to within (6) feet of the side yard property line on one side only.
 - Rear Yard: Fifteen (15) feet minimum
 - GARAGES AND CARPORTS:
 - Front Yard: Zero (0) feet – lot line
 - Side Yard: Zero (0) feet – lot line
 - Rear Yard: Zero (0) feet – lot line

and as shown in Exhibit 4.

- TOTAL NUMBER OF RESIDENTIAL LOTS IN PROJECT:
 - Single-Family Lots: 68 lots
 - Two-Family (Duplex) Lots: 6 lots
 - Total Lots: 74 lots
- TOTAL NUMBER OF UNITS IN PROJECT:
 - Single-Family Units: 68 units
 - Two-Family (Duplex) Units: 12 units
 - Total Units: 80 units

H. EXEMPTIONS PURSUANT TO MAUI COUNTY CODE REGARDING PROJECTS COMPRISED OF 100 PERCENT RESIDENTIAL WORKFORCE HOUSING UNITS

1. Section 12.08.050(D), MCC, as it pertains to *Driveway Permit Fees*.
2. Section 14.12.030, MCC, as it pertains to Water Availability.
3. Section 14.35.080, MCC, as it pertains to wastewater assessment fees for facility expansion for the Wailuku/Kahului Wastewater Treatment System.
- 3.4. Section 16.18B.107, MCC, as it pertains to the *Electrical Permit Fee* in Section 107.1C.
- 4.5. Section 16.20B.103.4, MCC, as it pertains to the *Plumbing Permit Fee* in Section 103.4.1.3.
- 5.6. Section 16.26B.108, MCC, as it pertains to the *Building Permit Fee* in Section 108.2.
- 6.7. Section 18.16.320 (I) (5), MCC, as it pertains to the *Park Assessment Fee*.
- 7.8. Section 20.08.090(D), MCC, as it pertains to *Grading and Grubbing Permit Fee*.

I. EXEMPTION FROM ORDINANCE 3686 (2009)

1. An exemption from the Conditions of Zoning set forth in Exhibit "B" and Exhibit "2" to Exhibit "C" of Ordinance 3686 (2009) shall be granted to exempt the Project from the conditions imposed therein.

Resolution

No. _____

APPROVING WITH MODIFICATION THE AFFORDABLE WORKFORCE HOUSING PROJECT BY WAIKAPU DEVELOPMENT VENTURE LLC, PURSUANT TO SECTION 201H-38, HAWAII REVISED STATUTES

WHEREAS, Waikapu Development Venture LLC, a Hawaii Limited Liability Company ("Waikapu Development Venture LLC"), proposes the development of the Affordable Workforce Housing Project ("Project") for qualified residents on approximately 12.5 acres of the 25.263-acre parcel identified for real property tax purposes as tax map key (2) 3-5-002:011; and

WHEREAS, the proposed Project will have a total of sixty-eight (68) single-family units and twelve (12) duplex units for a total of eighty (80) residential workforce housing units; and

WHEREAS, all units in the proposed Project will be sold to income-qualified individuals earning between seventy percent and one hundred forty percent of the County of Maui's area median income; and

WHEREAS, the Project will provide needed residential workforce housing units to meet the current and growing demand for housing; and

WHEREAS, on July 25, 2018, the Department of Housing and Human Concerns ("Department") submitted the preliminary plans and the specifications, and accompanying Application for Affordable Housing Subdivision ("Application") to the Maui County Council ("Council"), recommending approval of the Project pursuant to Section 201H-38, Hawaii Revised Statutes ("HRS"); and

WHEREAS, pursuant to Section 201H-38, HRS, the Council shall approve, approve with modification, or disapprove the Project by resolution within forty-five days after the Department submits the preliminary plans and specifications for the Project to the Council, or the Project shall be deemed approved; and

WHEREAS, pursuant to Section 4-1 of the Revised Charter of the County of Maui (1983), as amended, the Council is authorized to act by resolution; now, therefore,

Resolution No. _____

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

1. That, based upon the transmittals and the representations of the Department and Waikapu Development Venture LLC, the Council approves the Project, with modification, attached hereto as Exhibit "A" and made a part hereof, including the Project's preliminary plans and specifications, as submitted to the Council on July 25, 2018, pursuant to Section 201H-38, HRS; provided that Waikapu Development Venture LLC shall comply with all statutes, ordinances, charter provisions, and rules of governmental agencies relating to planning, zoning, and construction standards for subdivisions, development and improvement of land, and the construction of units thereon, except for the exemptions specified in Exhibit "B" attached hereto and made a part hereof; and

2. That the final plans and specifications for the Project shall be deemed approved by the Council if the final plans and specifications do not substantially deviate, as determined by the Director of Housing and Human Concerns, from the preliminary plans and specifications approved by the Council; and

3. That any substantial deviation from the preliminary plans and specifications shall be submitted to the Council for prior approval; and

4. That the final plans and specifications shall constitute the zoning, building, construction, and subdivision standards for the Project; and

5. That certified copies of this resolution shall be transmitted to the Director of Public Works, the Planning Director, the Director of Housing and Human Concerns, and Waikapu Development Venture LLC.

APPROVED AS TO FORM AND LEGALITY

Deputy Corporation Counsel
County of Maui
2017-0095

LU-2(4) 2018-08-16 Modification

MODIFICATIONS

1. Construction of the Waikapu Development Venture LLC Affordable Workforce Housing Project ("Project") shall commence within two years of the effective date of this resolution. Commencement of construction shall mean the visible start of grading, pursuant to a valid grading permit as needed for the development of the 12.5 acres upon which the 80 residential workforce housing units shall be constructed ("Property"). Waikapu Development Venture LLC shall act in good faith and with its reasonable best efforts to complete construction of the 80 residential workforce housing units, with all related roads and infrastructure, no later than four years after the effective date of this resolution.
2. Project approval shall lapse and become void if the State Land Use Commission fails to approve the sale of the Property by Emmanuel Lutheran Church of Maui to Waikapu Development Venture LLC within six months after the effective date of the resolution.

lu:misc:002(4)modifications02

EXHIBIT "A"

**WAIKAPU DEVELOPMENT VENTURE AFFORDABLE WORKFORCE HOUSING
PROJECT EXEMPTIONS PURSUANT TO SECTION 201H-38, HAWAII REVISED
STATUTES.**

A. EXEMPTION FROM TITLE 2, MCC, ADMINISTRATION AND PERSONNEL

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 - **Roadway B** — Five (5) foot wide Concrete Sidewalks will be provided on one side of portions of *Roadway B*; and the *Sidewalks will be in compliance with all ADA requirements*.
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and as shown in Exhibit 4.

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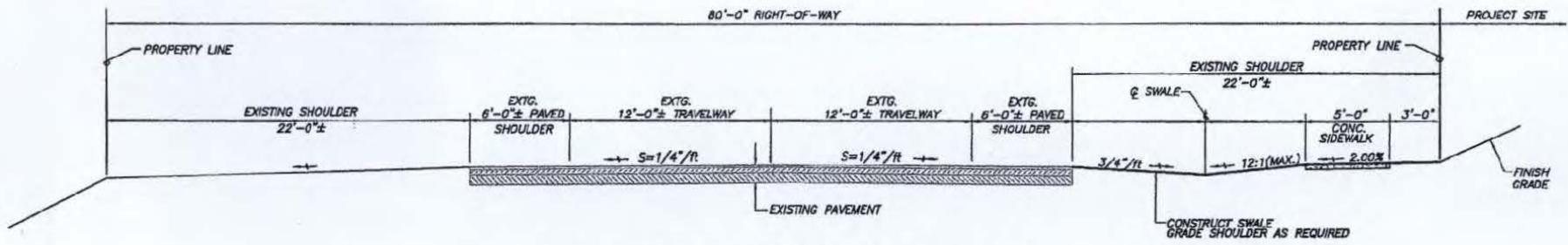
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2. Section 14.12.030, MCC, as it pertains to *Water Availability*.

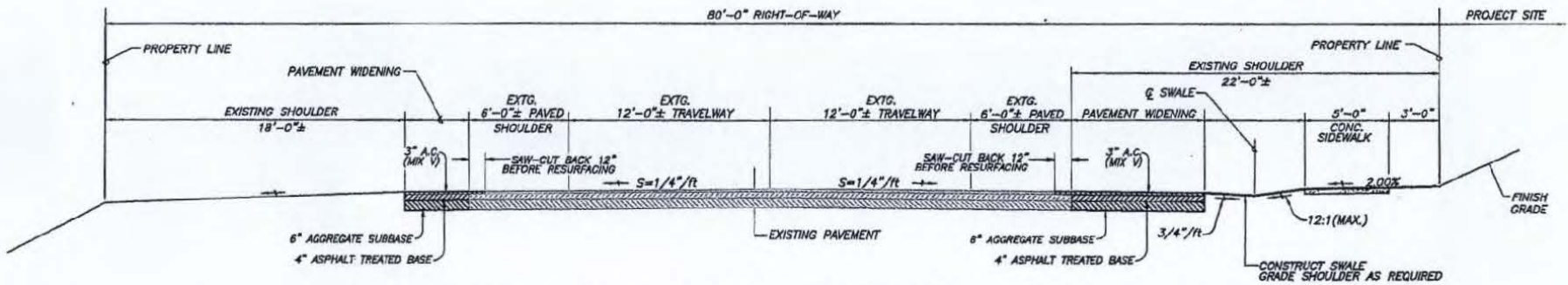
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4. Section 16.18B.107, MCC, as it pertains to the *Electrical Permit Fee* in Section 107.1C.
5. Section 16.20B.103.4, MCC, as it pertains to the *Plumbing Permit Fee* in Section 103.4.1.3.
6. Section 16.26B.108, MCC, as it pertains to the *Building Permit Fee* in Section 108.2.
7. Section 18.16.320 (I) (5), MCC, as it pertains to the *Park Assessment Fee*.
8. Section 20.08.090(D), MCC, as it pertains to *Grading and Grubbing Permit Fee*.

I. EXEMPTION FROM ORDINANCE 3686 (2009)

1. An exemption from the Conditions of Zoning set forth in Exhibit "B" and Exhibit "2" to Exhibit "C" of Ordinance 3686 (2009) shall be granted to exempt the Project from the conditions imposed therein.

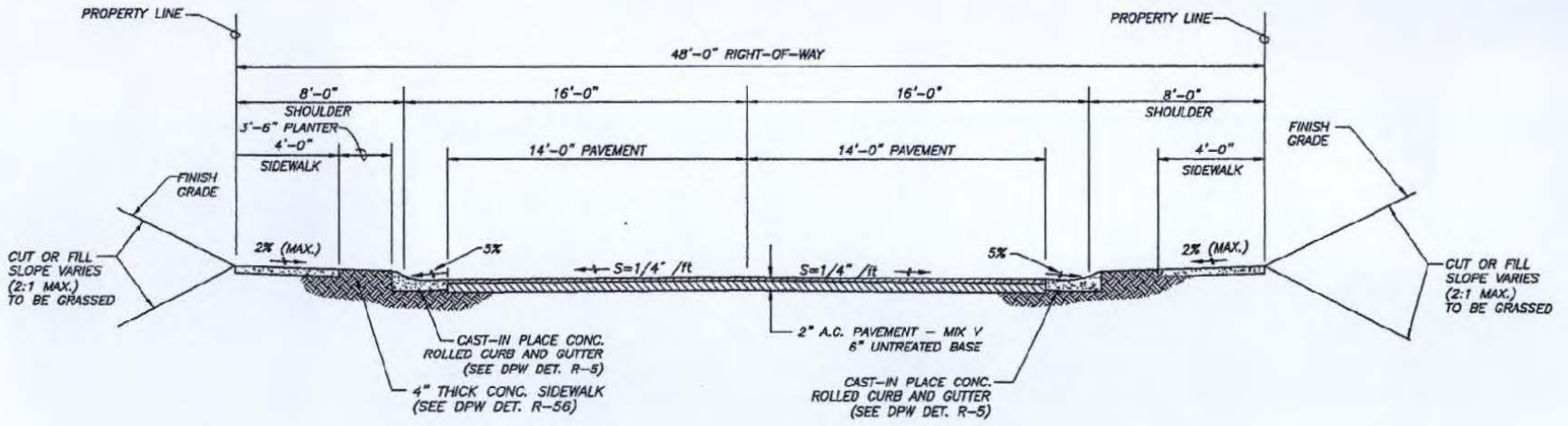


TYPICAL SECTION - WAIALE ROAD (80 FT. RIGHT-OF-WAY)
NOT TO SCALE

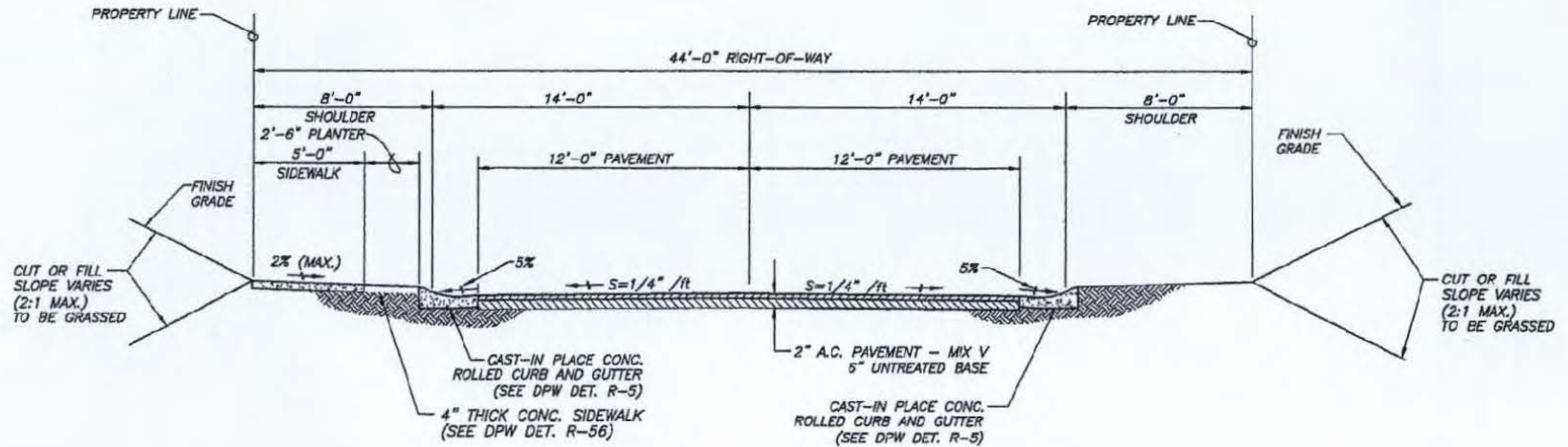


TYPICAL SECTION - WAIALE ROAD (80 FT. RIGHT-OF-WAY) W/ PAVEMENT WIDENING
NOT TO SCALE

TYPICAL SECTION
EXHIBIT 1



TYPICAL SECTION - SUBDIVISION INTERIOR ROAD "A" (48 FT. RIGHT-OF-WAY)
NOT TO SCALE

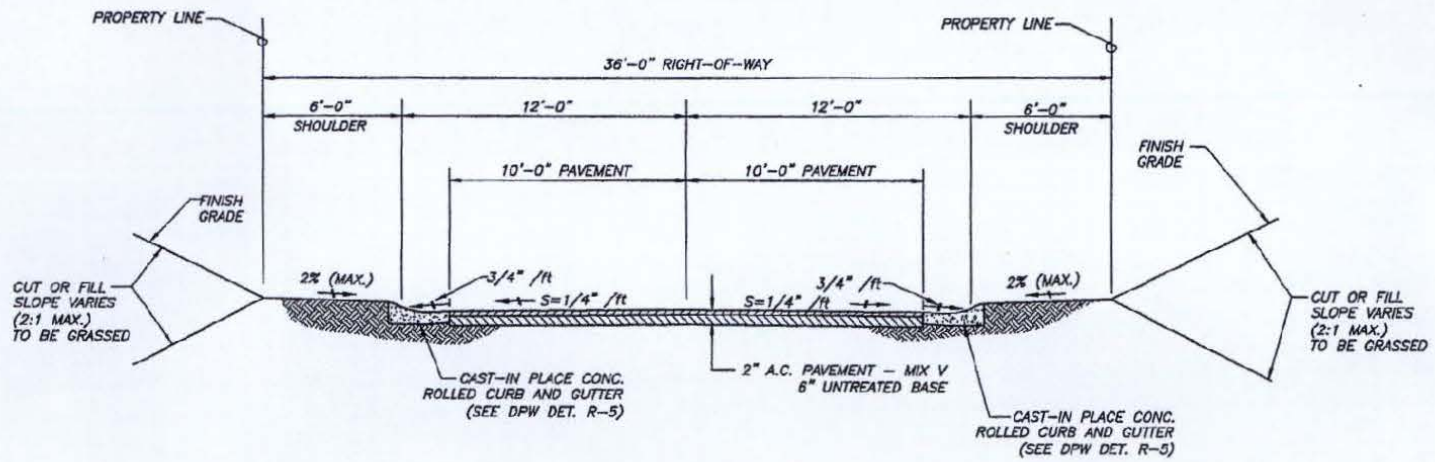


NOTES:

1. ROAD "B" ROW SHALL INCLUDE ON STREET PARALLEL PARKING STALLS, WHERE OCCURS.

TYPICAL SECTION - SUBDIVISION INTERIOR ROAD "B" (44 FT. RIGHT-OF-WAY)
NOT TO SCALE

TYPICAL SECTION
EXHIBIT 2



TYPICAL SECTION - SUBDIVISION INTERIOR ROAD "C" & "D" (36 FT. RIGHT-OF-WAY)
 NOT TO SCALE

TYPICAL SECTION
 EXHIBIT 3

