

Resolution

No. 25-178

AUTHORIZING THE EXECUTION OF THE PARK ASSESSMENT AGREEMENT
FOR THE WAIALE PARK LARGE LOT SUBDIVISION,
UNDER SECTION 18.16.320, MAUI COUNTY CODE

WHEREAS, Waiale 905 Partners, LLC ("Subdivider") is developing the Waiale Park Large Lot Subdivision ("Subdivision") situated at Waikapu, Maui, Hawaii; and

WHEREAS, the development of the Subdivision is ongoing and has been facilitated through various subdivisions of land; and

WHEREAS, under Section 18.16.320, Maui County Code, as a condition of subdivision approval, Subdivider is required to provide land in perpetuity or dedicate land for park and playground purposes; and

WHEREAS, Subdivider and the Department of Parks and Recreation desire to enter into the Park Assessment Agreement attached hereto as Exhibit "1;" and

WHEREAS, the dedication of the park will be consistent with the terms contained in the Agreement; and

WHEREAS, Section 3.44.015(F)(3), Maui County Code, authorizes the Director of Parks and Recreation to accept a conveyance of real property when the conveyance is made in accordance with a park assessment agreement approved by Council resolution under Section 18.16.320, Maui County Code; now, therefore,

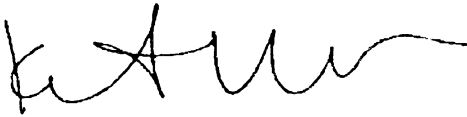
BE IT RESOLVED by the Council of the County of Maui:

1. That it authorizes the execution of the Park Assessment Agreement for the Waiale Park Large Lot Subdivision, under Section 18.16.320, Maui County Code;
2. That it does hereby authorize the Mayor of the County of Maui, or the Mayor's duly authorized representative, to execute all necessary

documents in connection with the acceptance of said Agreement;
and

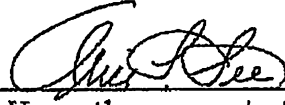
3. That certified copies of this Resolution be transmitted to the Mayor, Director of Parks and Recreation, Director of Public Works, and Michael W. Atherton, Manager of Waiale 905 Partners, LLC.

APPROVED AS TO FORM
AND LEGALITY:



KRISTIE M. WRIGGLESWORTH
Deputy Corporation Counsel
County of Maui
LF2025-0505

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "John A. Lee", is written over a horizontal line.

Upon the request of the Mayor.

EXHIBIT "1"

LAND COURT SYSTEM	REGULAR SYSTEM
Return by Mail (☒) Pickup (☐) To:	
Department of Parks & Recreation County of Maui P.O. Box 1405 Wailuku, Hawai'i 96793-6405	

TITLE OF DOCUMENT:

PARK ASSESSMENT AGREEMENT

PARTIES TO DOCUMENT:

WAIALE 905 PARTNERS, LLC
1670 Honoapiilani Highway
Wailuku, Hawai'i 96793

COUNTY OF MAUI, a political subdivision of the State of Hawaii
200 South Street
Wailuku, Hawai'i 96793

TMK: (2) 3-6-002-003 (por.)

Total No. of Pages: _____

PARK ASSESSMENT AGREEMENT

THIS PARK ASSESSMENT AGREEMENT (this “**Agreement**”) is executed this _____ day of, _____, 2025 by and between WAIALE 905 PARTNERS, LLC, a Hawai‘i limited liability company, whose address is 1670 Honoapi‘ilani Highway, Wailuku, Hawai‘i 96793 (“**Developer**”), and the COUNTY OF MAUI, a political subdivision of the State of Hawai‘i, whose address is 200 South High Street, Wailuku, Maui, Hawaii 96793 (“**County**”), hereinafter collectively referred to as (“**Parties**”)

WHEREAS, Developer is one of the entities developing the Waikapu Country Town District (the “**Development**”) as established in Chapter 19.96, Maui County Code (“**MCC**”);

WHEREAS, Developer owns that certain parcel of land located at Waikapū, District of Wailuku, Island and County of Maui. being a portion of Lot 2 of the “Waiale Park Large Lot Subdivision,” identified by Tax Map Key (2) 3-6-002-003 (por.) with an area of approximately 21.014 acres as described and depicted in Exhibit “A” attached hereto and incorporated herein (the “**Land**”);

WHEREAS, by Findings of Fact, Conclusions of Law, and Decision and Order, entered February 26, 2017, in Docket No. A15-798, the Land Use Commission of the State of Hawaii reclassified the areas of land on which the Development is situated from State Land Use Agricultural District to State Land Use Urban District;

WHEREAS, pursuant to such reclassification, Developer entered into that certain Declaration of Conditions recorded in the Bureau of Conveyances of the State of Hawaii (the “**Bureau**”) on December 20, 2019 as Document No. A-72930473 (the “**Declaration**”);

WHEREAS, the Declaration requires Developer to comply with the County of Maui park dedication requirements under such terms as may be approved by the Director of Parks and Recreation (the “**Director**”);

WHEREAS, by Ordinance 4998, the Council of the County of Maui changed the zoning of the areas of land on which the Development is situated from Wailuku-Kahului Project District 5 (Maui Tropical Plantation) and Agricultural District to Waikapu Country Town District;

WHEREAS, pursuant to Section 19.510.050.D, MCC, that certain Unilateral Agreement and Declaration for Conditional Zoning, dated August 30, 2019, was recorded in the State of Hawaii Bureau of Conveyances on September 4, 2019 as Document No. A-71860997;

WHEREAS, the Development is subject to park assessment requirements under Section 18.16.320, MCC; and

WHEREAS, the Parties seek to establish the details of their agreement to satisfy Developer's park assessment requirements for the Development, and upon satisfaction of the terms and conditions of this Agreement, County agrees that Developer will have fully satisfied its park assessment requirements for said Development pursuant to Section 18.16.320 MCC;

NOW, THEREFORE, the Parties hereby agree as follows:

1. Park Assessment Requirements

- a. Number of Units. The Development at full buildout is intended to be comprised of 500 Residential Workforce Housing Units, as defined in Chapter 2.96, MCC, and 933 market rate units.
- b. Calculation of Park Assessment Requirement. Based upon the unit count outlined in Paragraph 1(a), Developer is required to provide approximately 13.579 acres of improved park area, subject to adjustment as contemplated by Paragraph 3 below.
- c. Land Area: Pocket Parks. Developer may provide pocket parks (the "**Pocket Parks**") throughout the Development in areas designated as "Park" or "Open Space" by the Controlling Plan. Section 19.96.030, MCC, a copy of which is attached hereto and made a part hereof as Exhibit "B", subject to approval by the Director in accordance with Section 18.16.320.E, MCC.

The Pocket Parks will be privately owned and maintained by the Developer or its successors and assigns. The Pocket Parks will be open to the public, and subject to reasonable rules and regulations adopted by Developer or its successors and assigns, as amended from time to time. The use of the Pocket Parks will be restricted to park and playground purposes by recorded, perpetual covenants that will be enforceable by Developer, County, and their respective successors and assigns (a "**Unilateral Agreement**").

The perpetual maintenance of the Pocket Parks by Developer, its successor and assigns shall be assured by a Unilateral Agreement, which shall obligate Developer, its successors and assigns to maintain the Pocket Parks in perpetuity, and which shall empower County to enforce the Unilateral Agreement or to cause the maintenance of the Pocket Parks and seek reimbursement of all costs by any and all means available in the event of a default in said Unilateral Agreement that continues after notice of default and a reasonable opportunity to cure such default. Upon completion of each Pocket Park, Developer shall execute and record a Unilateral Agreement in favor of County to assure that such Pocket Park shall be privately and adequately maintained in perpetuity, and that the provisions of this section shall be observed.

- d. Land Area: Neighborhood Park. Developer intends to provide a neighborhood park (the “**Park**”), the area of which is approximately 21.014 acres, in the location approximately as shown on Exhibit “A” attached hereto and made a part hereof.
- e. Credits. Developer shall receive a credit for all park space conveyed to the County in excess of 13.579 acres and for one hundred percent of the area of each Pocket Park.
- f. Improvements. The Pocket Parks will be graded and improved with grass planting, automatic irrigation, and adequate drainage. The Park will be graded and improved with grass planting, automatic irrigation, approximately 38 parking stalls, adequate drainage, and a comfort station approximately 24’ X 26’. containing similar facilities/amenities as the comfort station contained in the Maui Lani Park as generally shown on Exhibit “C”, attached hereto and made a part hereof.
- g. Estimated Completion Date. The Park will be completed prior to the Pocket Parks being completed. Completion of the Park is expected to be completed within 12 months of the issuance of all construction permits related to the Park. Developer shall submit said permit applications within 6 months of the commencement of the construction of the backbone infrastructure for the Development.
- h. Proposed Uses of Park. The Pocket Parks may be used for passive recreation. The Park will be dedicated to County for passive recreation purposes and not used primarily as water retention basins. In satisfaction of Condition 14 of Ordinance 4998, this Agreement is deemed the park construction and phasing plan approved by the Department of Parks and Recreation, Department of Public Works, and Department of

Planning, that is in accordance with the Maui County Code. Nothing contained herein shall be interpreted or construed to be a construction permit approval (including, but no limited to building, plumbing, electrical, and grading) under said Code.

- i. Conceptual Rendering. Conceptual renderings of the Park are attached hereto as Exhibit "D" and made a part hereof.
 - j. Dedication. Upon completion of the improvements to the reasonable satisfaction of the Director, the Park shall be accepted by the Director in accordance with Section 3.44.015(F)(3), MCC.
 - k. Term of Agreement. This Agreement shall commence upon execution and shall terminate upon completion of the Pocket Parks, acceptance of dedication of the Park, and satisfaction of additional park requirements (if any) required by Paragraph 3 below, whereupon all requirements of Section 18.16.320, MCC shall be deemed satisfied, and County shall, upon the request of Developer, promptly execute and record a release of this Agreement.
2. Approvals Prior to Completion of Park Improvements. Due to the configuration of the Land and the plans for construction of the Development in increments, it is possible that completion of the improvements to the Pocket Parks and dedication of the Park will not occur prior to the time that final subdivision approval is requested or building permits applications are submitted for some units in the Development. In such an event, Developer may issue a letter of credit, surety bond, or other security in an amount equal to the parks dedication fee that would be payable for each unit for which a building permit is sought. Based on the issuance of such a letter of credit, bond, or other security, County will sign off on such building permits or subdivision approval. The letter of credit, bond or other security will be released once the Park has been completed, which completion shall be defined as the expiration of the 45-day period after filing with the Second Circuit Court of the State of Hawaii the published contractor Notice of Completion. County reserves the right to exercise its rights under the letter of credit, bond, or other security should the Park not be completed within two (2) years after the issuance of all building permits.
3. Adjustments. Developer shall inform County once the Development has been completed. At that time, to the extent there are any lands in the Development that are dedicated or provided for park and playground purposes in excess of what is required to be dedicated or provided

pursuant to Section 18.16.320, MCC, for this Development, County agrees that such areas may be used as credits for other projects, with the approval of the Director. To the extent the final Development results in the combined area of the Pocket Parks and the Park not being sufficient to satisfy the requirements of Section 18.16.320, MCC, Developer shall satisfy its park dedication requirements by complying with Section 18.16.320(B)(1), MCC.

4. Verification of Compliance. County agrees, upon the written request of Developer, to provide such written verification of Developer's compliance with this Agreement as Developer or its prospective or existing lenders or development partners may reasonably request.

5. Notifications. All notices required or permitted to be given under this Agreement shall be in writing and shall be delivered by personal delivery or by registered or certified mail, return receipt requested, postage prepaid, addressed to the party to be notified at the following address, or to such other address as the party to be notified shall have specified most recently by like notice:

If to County, then to:

Director, Department of Parks and Recreation
County of Maui
200 South High Street
Wailuku, Hawaii 96793

If to Developer, then to:

Waiale 905 Partners, LLC
1670 Honoapi'ilani Highway
Wailuku, Hawaii 96793

Notices given as provided in this Section shall be deemed given on delivery or upon receipt if by personal delivery. Any notice may be sent on behalf of either party by such party's counsel.

6. Attorneys' Fees. In the event that any party brings an action or proceeding against any other party to enforce or to prevent the breach of any provision of this Agreement or for damages by reason of any breach of this Agreement, or for any other judicial or administrative remedy, then the prevailing party shall be entitled to be reimbursed by the non-prevailing party for all costs and expenses incurred in connection therewith, including, but not limited to, reasonable attorneys' fees and expenses.

7. Severability. If any provision of this Agreement or the application hereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other persons or circumstances shall not be affected hereby.

8. Recordation. Developer shall record this Agreement with the Bureau of Conveyances of the State of Hawaii after execution by Developer and County. Upon recordation of this Agreement, the conditions imposed in this Agreement shall run with the Land and shall constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who claim an interest in the Land. Upon further subdivision of the Land or other legal division of ownership thereof, such as by creation of a condominium property regime, such that the Pocket Parks and/or the Park become separate legal lots or units of ownership, it is intended that this Agreement shall constitute an encumbrance only on the legal lot or unit of ownership in which the Pocket Parks and the Park are a part, and not on any other parcel of land or unit. This Agreement shall be enforceable by County by appropriate action at law or suit in equity, against Developer and its successors and assigns.

9. Entire Agreement; Amendment. This Agreement shall, upon approval of the same by the Maui County Council and execution by Parties, be binding upon the Parties hereto, notwithstanding the subsequent enactment by County of a law of general application that conflicts with this Agreement. This Agreement and the attachments hereto contain the entire agreement of the Parties with respect to said Agreement, and shall supersede all negotiations, agreements, and understanding with respect thereto. This Agreement may only be amended by written agreement approved by Maui County Council resolution.

10. Governing Law. This Agreement and the rights and obligations of Developer and County shall be interpreted in accordance with the laws of the State of Hawai'i and any applicable federal law. The venue for any action with respect to this Agreement shall be in Wailuku, Maui, Hawaii.

11. Counterparts. The parties hereto agree that this Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute on and the same agreement, binding all Parties hereto, notwithstanding all of the Parties are not signatory to the original or same counterparts. For all purposes, duplicate unexecuted pages of the counterparts may be discarded and the remaining pages may be assembled as one document.

IN WITNESS WHEREOF, the Parties execute this Agreement by their signatures, on the dates below, to be effective as of the date of the last signature hereto.

WAIALE 905 PARTNERS, LLC

By: Michael W. Atherton
Its: Manager

By: Larry W. Anderson
Its: Manager

By: Albert G. Boyce, V
Its: Manager

Approved:

William Filios, Trustee of The Restated
William Filios Separate Property Trust dated
September 9, 2016

COUNTY OF MAUI

RICHARD T. BISSEN, JR.
Its Mayor

REVIEWED AND APPROVED:

PATRICK S. McCALL
Director of Parks and Recreation
County of Maui

KATE BLYSTONE
Director Planning
County of Maui

JORDAN K. MOLINA
Director of Public Works
County of Maui

APPROVED AS TO FORM AND LEGALITY:

KRISTIE M. WRIGGLESWORTH
Deputy Corporation Counsel
County of Maui

LF2025-0505
2025-07-28 Waikapu Makai Park Assessment Agreement docx

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared MICHAEL W. ATHERTON, as manager of Waiale 905 Partners, LLC, a Hawaii limited liability company who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared LARRY W. ANDERSON, as manager of Waiale 905 Partners, LLC, a Hawaii limited liability company, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of _____)

On _____ before me, _____
(insert name and title of the officer)

personally appeared ALBERT G. BOYCE, V, as manager of Waikapu Properties, LLC, a Hawaii limited liability company, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

STATE OF HAWAI'I)
) SS.
COUNTY OF MAUI)

On this _____ day of _____, 2025, before me appeared RICHARD T. BISSEN JR., to me personally known, who, being by me duly sworn, did say that he is the Mayor of the County of Maui, a political subdivision of the State of Hawai'i, and that the seal affixed to the foregoing instrument is the lawful seal of the said County of Maui, and that the said instrument was signed and sealed on behalf of the County of Maui pursuant to Section 7-5.11 and Section 9-18 of the Charter of the County of the Maui; and the said RICHARD T. BISSEN, JR., acknowledged the said instrument to be the free act and deed of said County of Maui.

Notary Public, State of Hawai'i

Printed Name

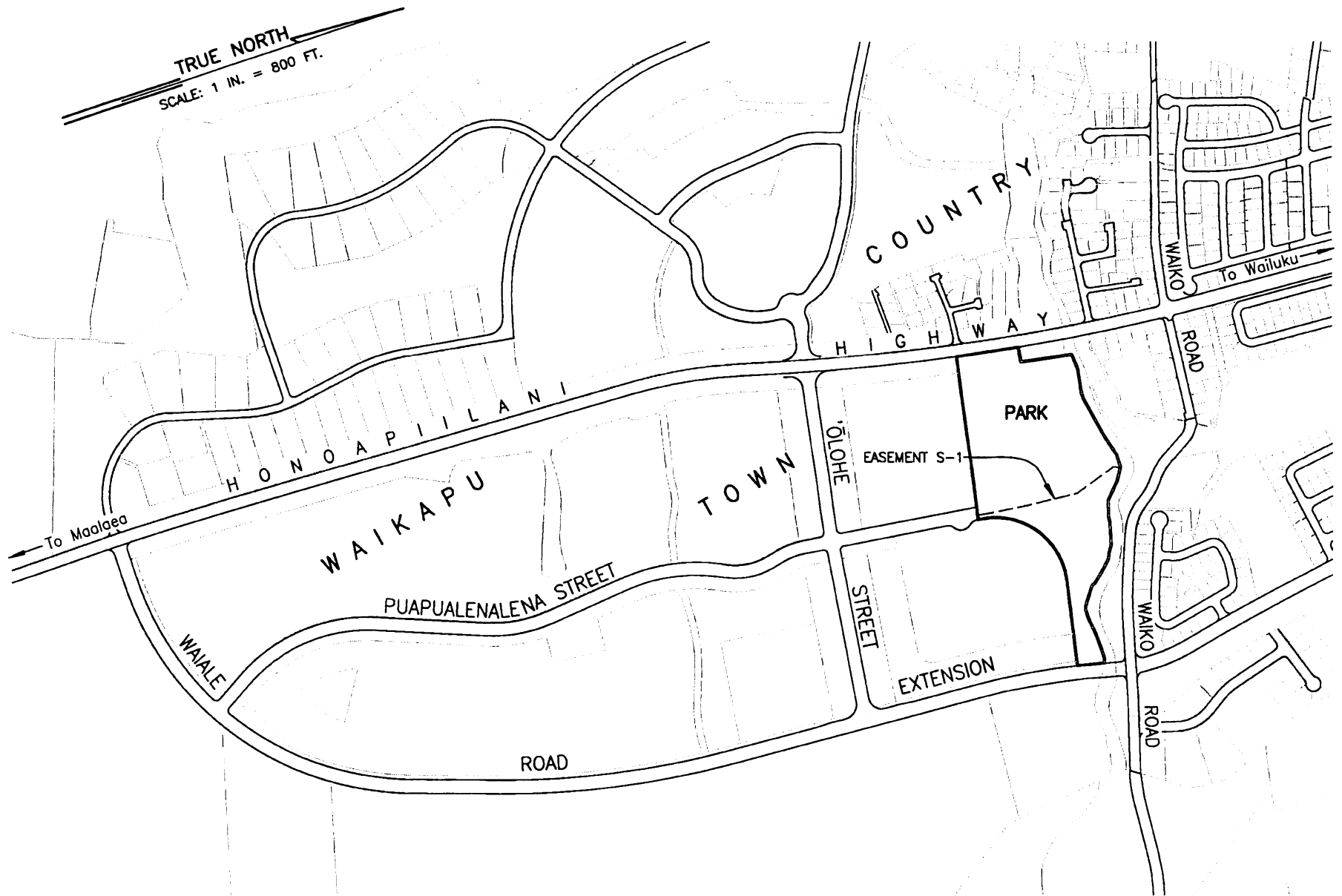
My Commission Expires: _____

Doc. Date	_____	# Pages:	_____
Notary Name:	_____	Judicial Circuit:	_____
Doc. Description:	_____		

Notary Signature	_____	Date	_____

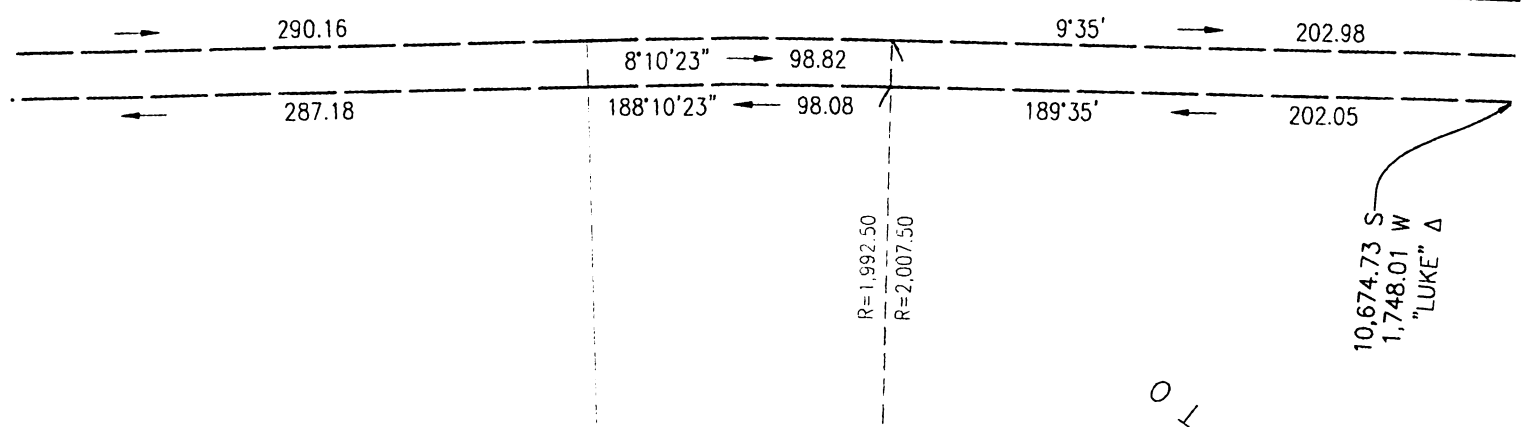
EXHIBIT "A"

Land Map



LOCATION MAP

1100



**Waikapu Country Town Park
Description of Park**

A portion of that certain parcel of land known as Lot 2 of Waiale Park Large Lot Subdivision, being also portions of Grant 2747 to Eugene Bal, Land Commission Award 411 to Poonui and Grant 3152 to Henry Cornwell

Beginning at a point at the northwesterly corner of this portion of land, being also the northwesterly corner of Lot 2 of Waiale Park Large Lot Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being: 10,106.64 feet South and 2,576.51 feet West and running by azimuths measured clockwise from True North:

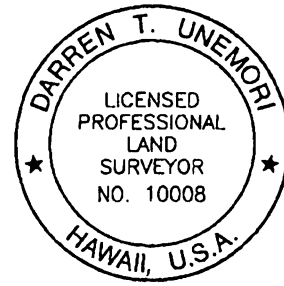
1. 280° 48' 30" 88.20 feet along Consolidated Lot of Sakamoto Subdivision, being also along the remainder of Grant 2747 to Eugene Bal, to a point;
2. 192° 04' 89.20 feet along same, to a point;
3. 191° 47' 208.12 feet along same, to a point;

Thence along the top of bank of Waikapu Stream with all its sinuosities for the next twenty five (25) courses, the direct azimuths and distances between points along said top of bank being:

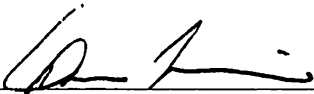
4. 268° 13' 94.39 feet to a point;
5. 282° 11' 143.41 feet to a point;
6. 269° 18' 34.65 feet to a point;
7. 261° 37' 244.28 feet to a point;
8. 257° 22' 129.46 feet to a point;
9. 273° 44' 76.09 feet to a point;
10. 303° 48' 79.74 feet to a point;
11. 314° 21' 126.87 feet to a point;
12. 289° 54' 97.17 feet to a point;

- | | | | |
|-----|--|-----|-------------------------|
| 13. | 275° | 14' | 31.75 feet to a point; |
| 14. | 287° | 11' | 131.83 feet to a point; |
| 15. | 305° | 54' | 52.51 feet to a point; |
| 16. | 294° | 57' | 31.11 feet to a point; |
| 17. | 317° | 47' | 69.56 feet to a point; |
| 18. | 319° | 48' | 49.81 feet to a point; |
| 19. | 322° | 26' | 45.91 feet to a point; |
| 20. | 338° | 50' | 22.65 feet to a point; |
| 21. | 307° | 58' | 121.83 feet to a point; |
| 22. | 290° | 48' | 24.17 feet to a point; |
| 23. | 272° | 17' | 49.44 feet to a point; |
| 24. | 265° | 37' | 95.78 feet to a point; |
| 25. | 268° | 19' | 59.63 feet to a point; |
| 26. | 270° | 47' | 50.48 feet to a point; |
| 27. | 273° | 02' | 41.44 feet to a point; |
| 28. | 288° | 44' | 31.73 feet to a point; |
| 29. | <p>Thence along the remainder of Lot 2 of Waiale Park Large Lot Subdivision, being also along the remainder of Grant 3152 to Henry Cornwell, on a curve to the left with the point of curvature azimuth from the radial point being: 106° 25' 22" and the point of tangency azimuth from the radial point being: 104° 10' 02", having a radius of 4,040.00 feet, the chord azimuth and distance being: 15° 17' 42" 159.04 feet to a point;</p> | | |

30. 103° 33' 500.78 feet along same, to a point;
31. Thence along the remainder of Lot 2 of Waiale Park Large Lot Subdivision, being also along the remainders of Grant 3152 to Henry Cornwell and Grant 2747 to Eugene Bal, on a curve to the left having a radius of 412.50 feet, the chord azimuth and distance being:
56° 34' 603.20 feet to a point;
32. 9° 35' 25.70 feet along the remainder of Lot 2 of Waiale Park Large Lot Subdivision, being also the remainder of Grant 2747 to Eugene Bal, to a point;
33. 103° 08' 01" 961.00 feet along the remainder of Lot 2 of Waiale Park Large Lot Subdivision, being also along the remainders of Grant 2747 to Eugene Bal and Land Commission Award 411 to Poonui, to a point;
34. Thence along the easterly side of Honoapiilani Highway (F.A.P. No. 13-G) on a curve to the left, with the point of curvature azimuth from the radial point being:
282° 39' 08" and the point of tangency azimuth from the radial point being:
280° 57' 12", having a radius of 12,312.70 feet, the chord azimuth and distance being:
191° 48' 10" 365.07 feet to the point of beginning and containing an Area of
21.041 Acres.



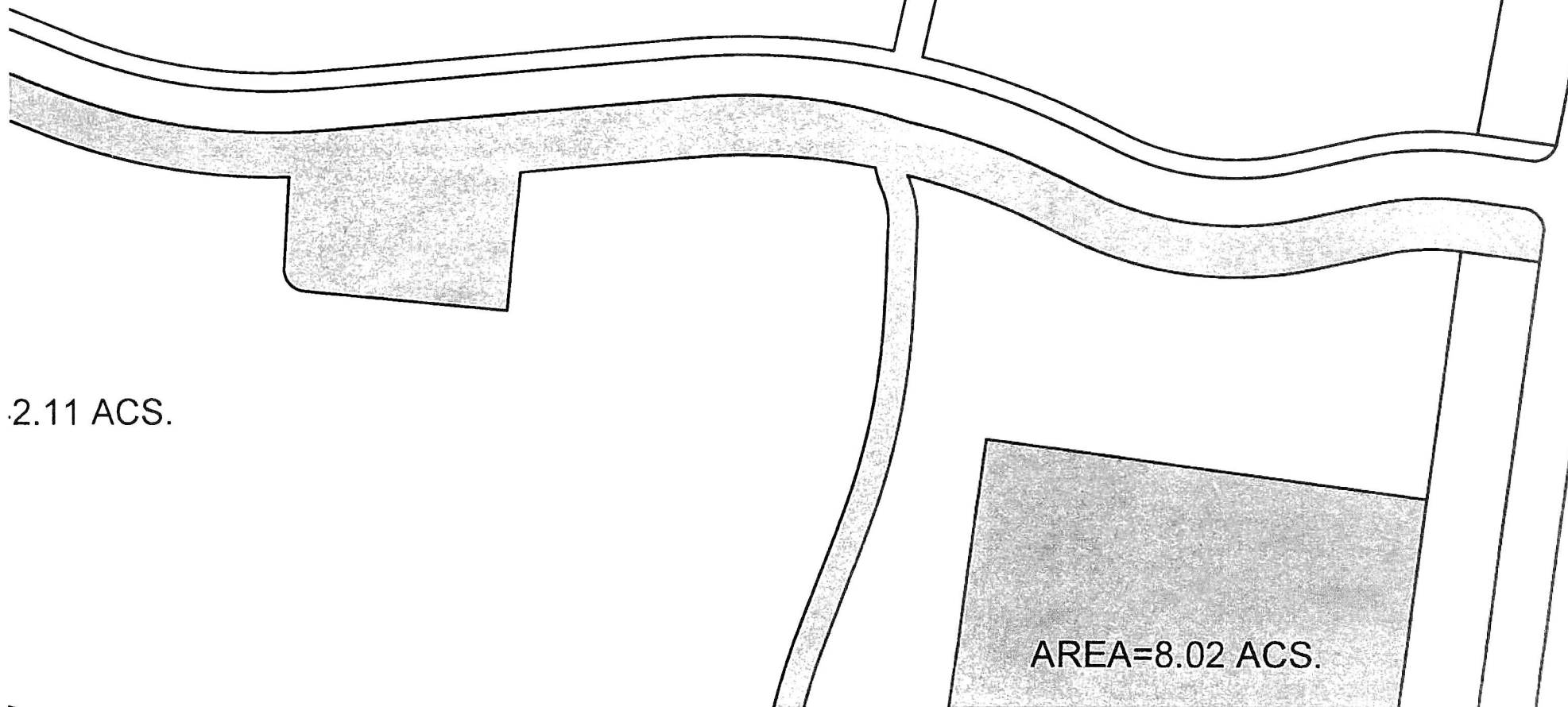
WARREN S. UNEMORI ENGINEERING, INC.
Wells Street Professional Center
2145 Wells Street, Suite 403
Wailuku, Maui, Hawaii 96793
March 24, 2025

BY:  04/30/26 Exp.
Licensed Professional Land Surveyor
Certificate No. 10008

1. The State of Hawaii, Department of Land and Natural Resources, Office of the Surveyor General, has received and accepted the foregoing Certificate of Survey for the purpose of recording the same in the public records of the State of Hawaii.

EXHIBIT “B”

Controlling Plan



.2.11 ACS.

AREA=8.02 ACS.

EA=14.49 ACS.

AREA=10.21 ACS.

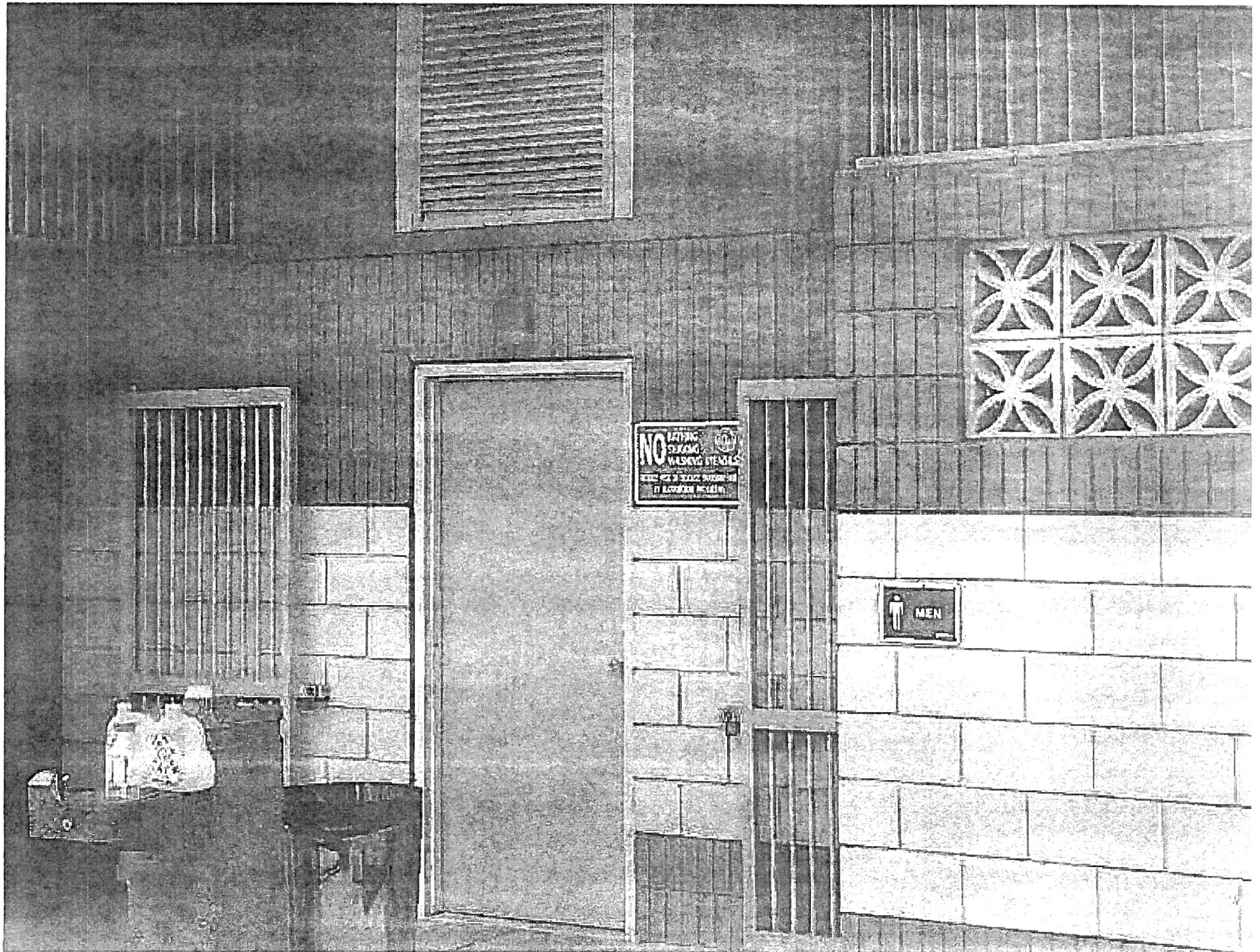
0.82 ACS.

AREA=10.24 ,

6.

EXHIBIT "C"

Comfort Station



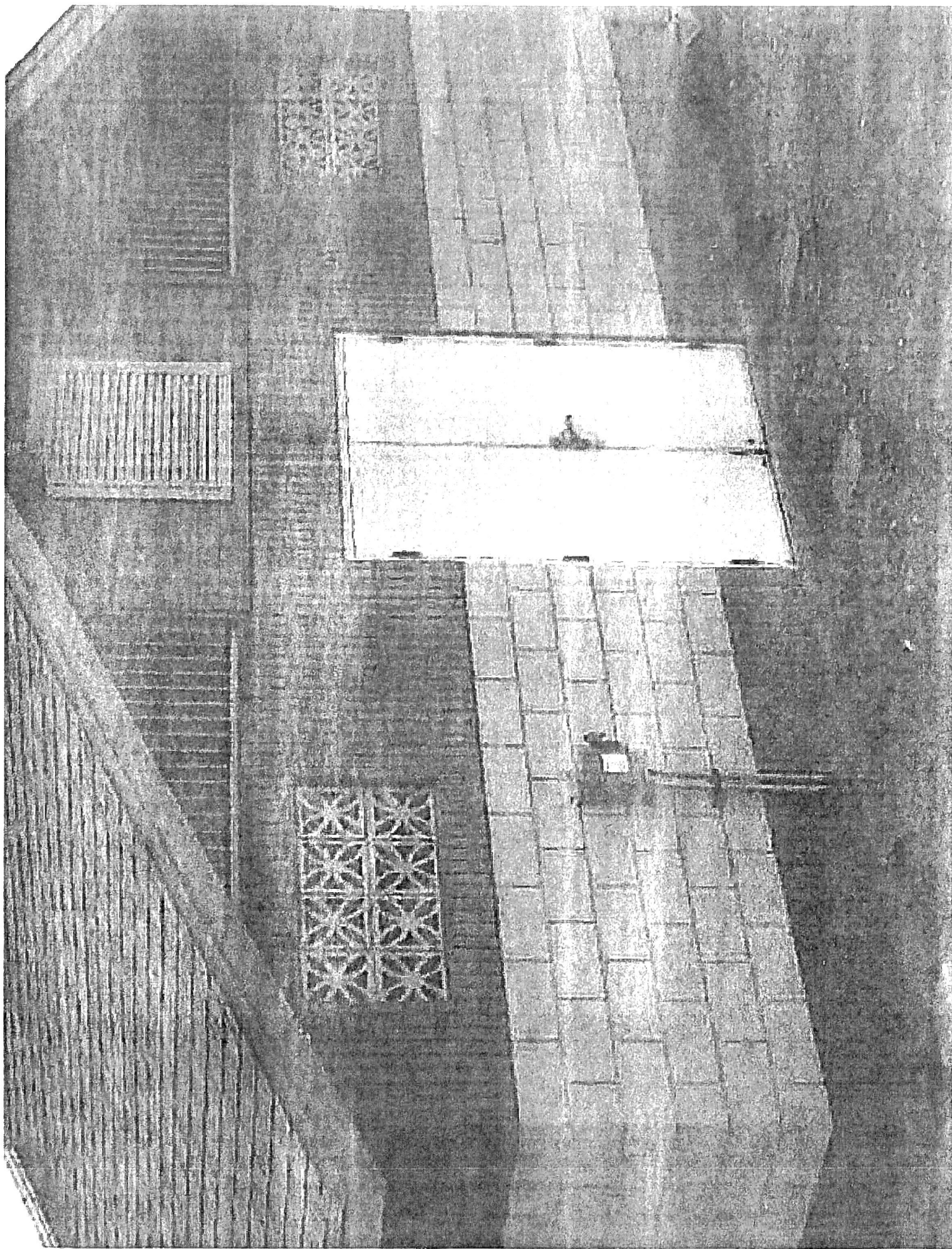
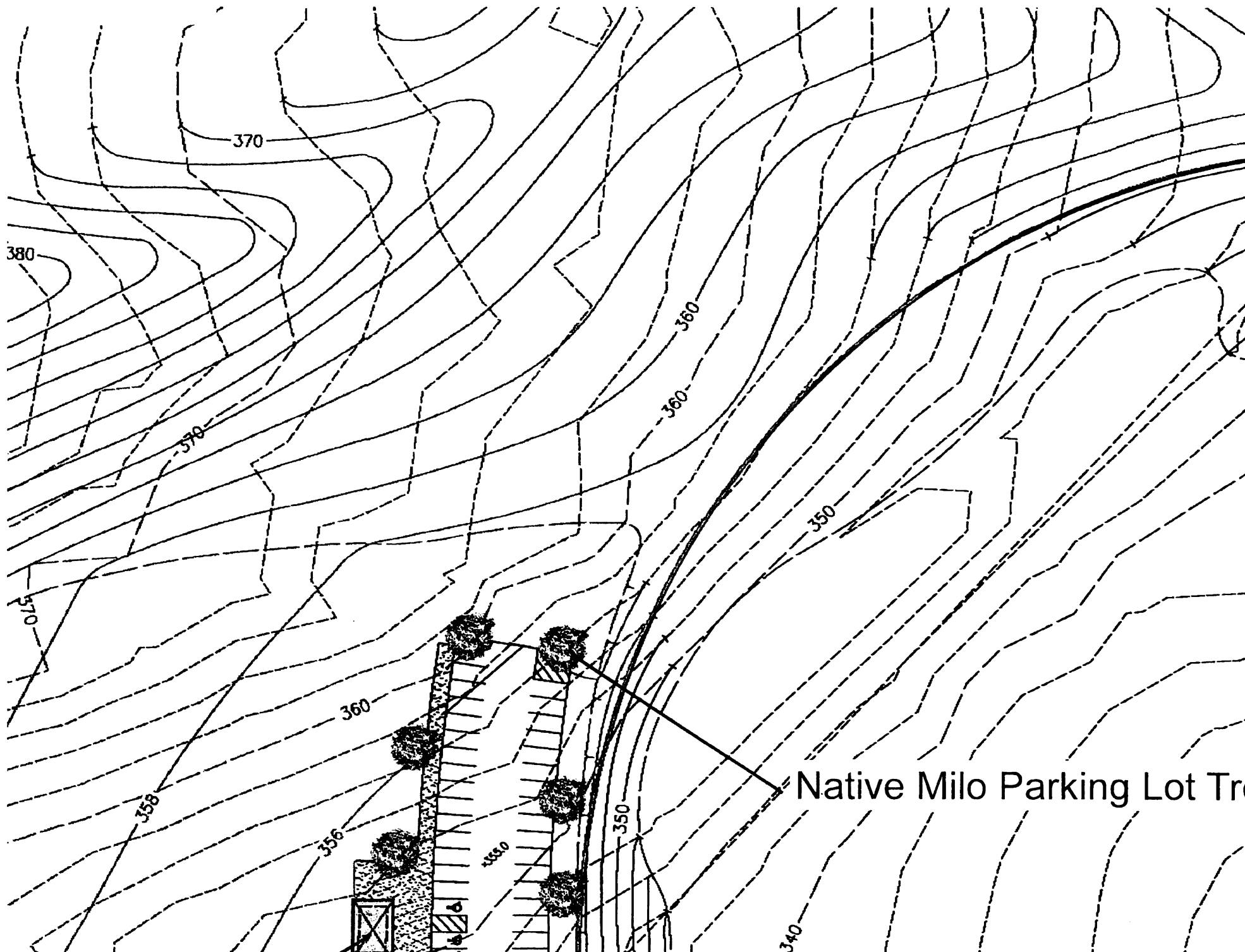


EXHIBIT “D”

Conceptual Rendering of Park



Native Milo Parking Lot Tr