CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 32 (2014), CD1

A BILL FOR AN ORDINANCE

TO REZONE LAND SITUATED AT MAKAHA VALLEY, OAHU, HAWAII.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Zoning Map No. 15 (Lualualei-Makaha), Ordinance 86-117, is hereby amended as follows: Land situated at Makaha Valley, Oahu, Hawaii hereinafter described, is hereby rezoned from the AG-2 General Agricultural District to the P-2 General Preservation District. The boundaries of said District shall be described as shown on the map attached hereto, marked "Exhibit A" and made a part hereof, and further identified as Tax Map Key: 8-4-002: Portion of 055.

SECTION 2. A Unilateral Agreement marked "Exhibit B" is by reference incorporated herein and made a part hereof.

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE _____

BILL 32 (2014), CD1

A BILL FOR AN ORDINANCE

SECTION 3. This ordinance takes effect upon its approval.

INTRODUCED BY:

Ernest Martin (BR)

Kymberly Pine (BR)

DATE OF INTRODUCTION:

April 7, 2014
Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel

APPROVED this _____ day of _____, 20____.

KIRK CALDWELL, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
CERTIFICATE

ORDINANCE **BILL 32 (2014), CD1**

Introduced: 04/07/14 By: ERNEST MARTIN (BR) Committee: ZONING AND PLANNING

Title: A BILL FOR AN ORDINANCE TO REZONE LAND SITUATED AT MAKAHA VALLEY, OAHU, HAWAII.

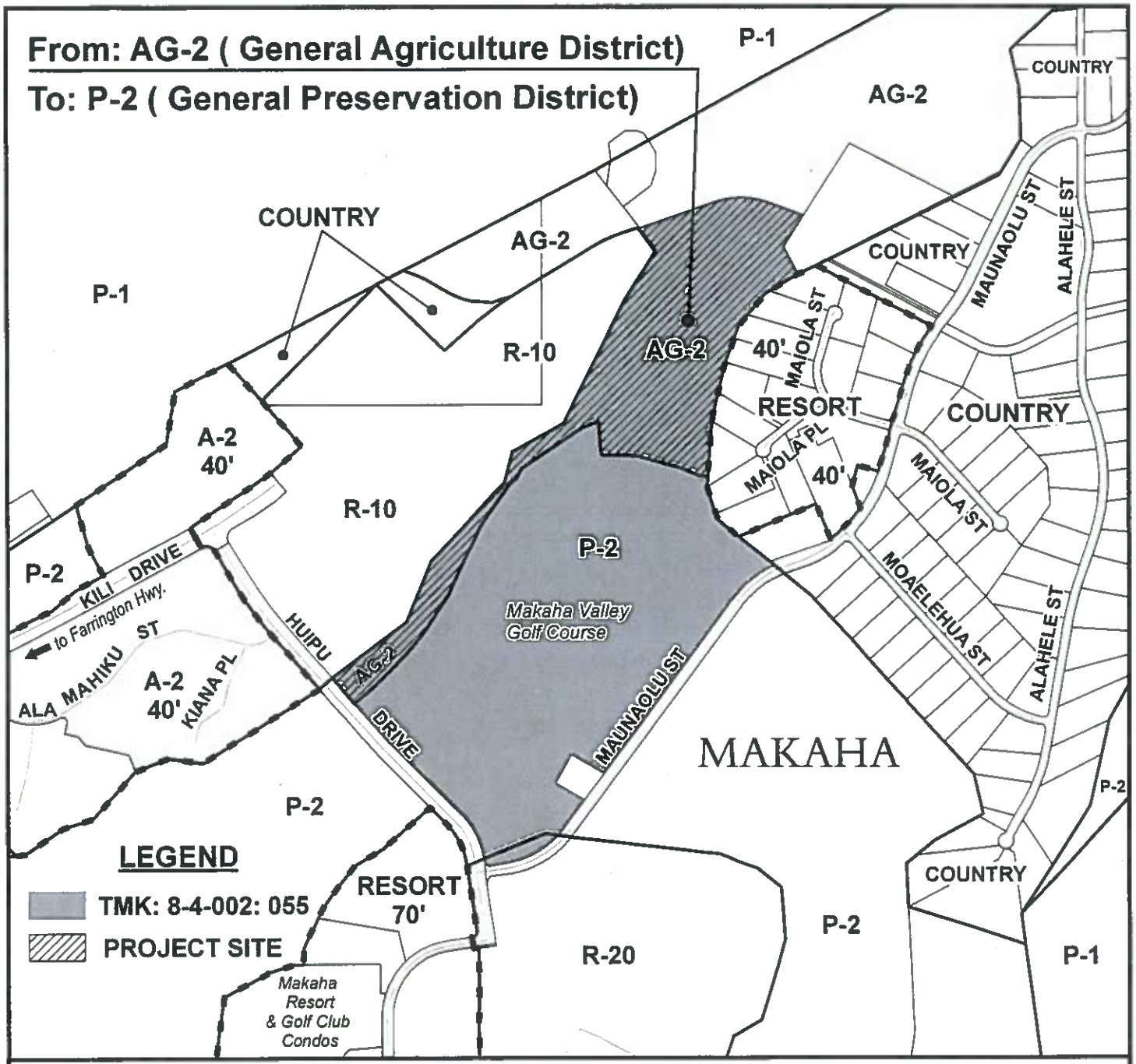
Voting Legend: * = Aye w/Reservations

04/16/14	COUNCIL	BILL PASSED FIRST READING AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.
04/24/14	ZONING AND PLANNING	CR-122 - BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON SECOND READING AS AMENDED IN CD1 FORM AND SCHEDULING OF A PUBLIC HEARING.
04/26/14	PUBLISH	PUBLIC HEARING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
05/07/14	COUNCIL/PUBLIC HEARING	CR-122 ADOPTED. BILL PASSED SECOND READING AS AMENDED, PUBLIC HEARING CLOSED AND REFERRED TO COMMITTEE ON ZONING AND PLANNING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.
05/13/14	PUBLISH	SECOND READING NOTICE PUBLISHED IN THE HONOLULU STAR-ADVERTISER.
05/22/14	ZONING AND PLANNING	CR-167 – BILL REPORTED OUT OF COMMITTEE FOR PASSAGE ON THIRD READING.
06/04/14	COUNCIL	CR-167 ADOPTED AND BILL 32 (2014), CD1 PASSED THIRD READING. 9 AYES: ANDERSON, CHANG, FUKUNAGA, HARIMOTO, KOBAYASHI, MANAHAN, MARTIN, MENOR, PINE.

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.

FOR BERNICE K. N. MAU, CITY CLERK

ERNEST Y. MARTIN, CHAIR AND PRESIDING OFFICER



PORTION OF

EXISTING ZONING MAP # 15 (LUALUALEI-MAKAHA)

0 400 800

1 INCH = 800 FEET

Land situated approximately 2,550 feet East from the intersection of Kili Drive and Huipu Drive and approximately 830 feet West from the intersection of Maiola Street and Maiola Place.

APPLICANT:	HAWAII MGCW LLC
TAX MAP KEY(S):	8-4-002: PORTION OF 055
FOLDER NO.:	2013/Z-8
LAND AREA:	28.3 Acres (Approx.)
PREPARED BY:	DEPARTMENT OF PLANNING AND PERMITTING CITY AND COUNTY OF HONOLULU
PUBLIC HEARING:	PLANNING COMMISSION: March 5, 2014 CITY COUNCIL: MAY 0 7 2014

Bill 32 (2014), CD1

2013/Z-6

Prepared by: Department of Planning & Permitting
City & County of Honolulu

EXHIBIT A

Copyright City & County of Honolulu
All Rights Reserved 2014

I hereby certify that this is
a true copy from the records
of the Bureau of Conveyances,

Doc T – 8908308
CT 1073854
as ___ May 23, 2014 8:02 AM

Registrar of Conveyances
Assistant Registrar, Land Court
State of Hawaii

Land Court | Regular System

After Recordation Return By: Mail (X) Pickup ( ) To:

Patrick Seguirant Architect
91-1030 Kaihi Street
Ewa Beach, Hawaii 96706
Telephone: 683-4477

TITLE OF DOCUMENT:	Unilateral Agreement and Declaration for Conditional Zoning
PARTY TO DOCUMENT:	HAWAII MGCW LLC
TAX MAP KEY NO.:	(1) 8-4-002: 055

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE (hereinafter referred to as this "Unilateral Agreement" or this "Declaration"), made this 23rd day of May, 2014, by HAWAII MGCW LLC, a Hawaii limited liability company, whose address is 770 Auloa Road, Kailua, Hawaii 96734 (hereinafter referred to as the "Declarant"),

WITNESSETH:

WHEREAS, the Declarant is the owner in fee simple of that certain parcel of land situated in Makaha, City and County of Honolulu, State of Hawaii, consisting of approximately 87.44 acres, described as Tax Map Key No. (1) 8-4-002: 055, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Land"), and desires to make the Land subject to this Unilateral Agreement; and

EXHIBIT B

D- 428

WHEREAS, the Declarant plans to develop a golf course on the Land (the "Project"); and

WHEREAS, the City Council (the "Council") of the City and County of Honolulu (the "City"), pursuant to the provisions of the Land Use Ordinance ("LUO"), Revised Ordinances of Honolulu 1990 ("ROH") Section 21-2.80, as amended, relating to conditional zoning, is considering a change in zoning under the LUO of a portion of the Land from the AG-2 General Agricultural District to the P-2 General Preservation District (the "zone change"); and

WHEREAS, the portion of the Land subject to the zone change, consisting of approximately 28.3 acres, is depicted as the parallel-lined area designated as "Project Site" on the portion of Zoning Map No. 15 attached hereto as Exhibit B and made a part hereof; and

WHEREAS, a public hearing regarding the change in zoning, Bill 32 (2014), was held by the Council on May 7, 2014; and

WHEREAS, the Council recommended by its Zoning and Planning Committee Report No. 167 that the said zone change be approved, subject to the following conditions contained in this Declaration to be made pursuant to the provisions of ROH Section 21-2.80, as amended, relating to conditional zoning, and to become effective on the effective date of the zoning ordinance approving the change of zoning (the "Rezoning Ordinance");

NOW THEREFORE, the Declarant hereby covenants and declares as follows:

1. Transportation. Prior to issuance of any grading, demolition, and/or building permit, whichever comes first, for the Project site or any portion of Tax Map Key 8-4-002: 055, the Declarant shall prepare a Construction Management Plan (CMP) and submit it to the DPP for review and approval. The CMP shall identify the type, frequency, and routing of heavy trucks and construction-related vehicles. Every effort shall be made to minimize impacts from these vehicles and related construction activities. The CMP shall include provisions to limit vehicular activity to timeframes outside of peak traffic periods, utilizing alternate routes for heavy trucks, staging locations for construction workers and vehicles, and other mitigation measures that may impact traffic. The Declarant shall document the condition of roadways in the immediate vicinity of the Project site prior to the commencement of construction activities and provide remedial measures, as necessary, such as restriping, road resurfacing, and/or reconstruction if the condition of these roadways has deteriorated due to the Project's construction activity.

2. Compliance With Other Governmental Requirements. The Declarant acknowledges that approval of the zone change does not constitute compliance with other LUO or other governmental requirements. They are subject to separate review and approval. The Declarant shall be responsible for ensuring that the final plans for the Project comply with all applicable LUO and other governmental provisions and requirements.

3. Annual Reports. On an annual basis, the Declarant shall submit a written status report to the DPP documenting its satisfaction of and/or describing its progress toward complying

with each condition of approval for this zone change. The status report shall be submitted to the DPP by December 31 of each year until such time as the DPP has determined that all conditions of approval have been satisfied.

4. Noncompliance or Failure to Fulfill Any Condition. In the event of noncompliance with any of the conditions set forth herein, the Director of DPP shall inform the Council and may seek civil enforcement or take appropriate action to terminate or stop the Project until applicable conditions are met, including but not limited to revoking any permits issued under this zoning and withholding issuance of other permits related to the Project. Noncompliance also may be grounds for the enactment of ordinances making further zone changes, including revocation of the underlying zoning, upon initiation by the proper parties in accordance with the Revised City Charter.

NOW, THEREFORE, the Declarant hereby makes the following additional Declarations:

As used herein, references to a specific City department or agency shall be deemed to include a reference to any successor department or agency.

That the conditions imposed herein are reasonably conceived to fulfill public service demands created by the requested change in zoning and are rationally related to the objective of preserving the public health, safety and general welfare and the further implementation of the General Plan of the City and County of Honolulu.

That the development of the Land shall conform to the aforesaid conditions with the understanding that, at the request of the Declarant and upon the satisfaction of the conditions set forth in this Unilateral Agreement, the Department of Planning and Permitting may fully or partially release, as applicable, any of the foregoing conditions that have been fulfilled.

That if there are any conflicts between this Unilateral Agreement and any previous unilateral agreement(s) applicable to the Land, the terms and conditions of this Unilateral Agreement shall apply.

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that the conditions imposed in this Declaration shall run with the Land and shall bind and constitute notice to all the parties hereto and subsequent lessees, grantees, assignees, mortgagees, lienors, successors, and any other persons who have or claim to have an interest in the Land, and the City and County of Honolulu shall have the right to enforce this Declaration by rezoning, appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may file a petition with the Department of Planning and Permitting for amendment or removal of any conditions or termination of this Declaration, such petition to be processed in the same manner as petitions for zone changes.

IN WITNESS WHEREOF, the parties hereto have executed this Unilateral Agreement and Declaration for Conditional Zoning on the day and year first above written.

DECLARANT:

HAWAII MGCW LLC,
a Hawaii limited liability company

By_____
Micah Kane
Its Authorized Representative

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

On this 23rd day of May, 2014, before me personally appeared MICAH KANE, to me personally known, who, being by me sworn, did say that he is the Authorized Representative, HAWAII MGCW LLC, a Hawaii limited liability company, that the foregoing instrument was signed in behalf of said limited liability company; and that he acknowledged said instrument to be the free act and deed of said limited liability company.

WENDY T. TERUYA NOTARY 94-455 PUBLIC STATE OF HAWAII

Name: Wendy T. Teruya
Notary Public, State of Hawaii

My commission expires: 8/3/2014

(Official Stamp or Seal)

NOTARY CERTIFICATION STATEMENT

Document Identification or Description: Unilateral Agreement and Declaration for Conditional Zoning

Doc. Date: 5/23/14 or ☐ Undated at time of notarization.

No. of Pages: 7 Jurisdiction: First Circuit
(in which notarial act is performed)

Signature of Notary

5/23/14
Date of Notarization and Certification Statement

Wendy T. Teruya
Printed Name of Notary

WENDY T. TERUYA NOTARY 94-455 PUBLIC STATE OF HAWAII

(Official Stamp or Seal)

EXHIBIT "A"
(Tax Map Key 8-4-002: 055)

All of that certain parcel of land situate at Makaha, Waianae, City and County of Honolulu, being a portion of the land described as follows:

LOT 1447, area 87.440 acres, more or less, as shown on Map 186, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1052 (amended) of Waianae Company.

Together with a right of way across Easement "62" across Lot 1248, as shown on Map 168, and Lot 1241, as shown on Map 131, Lot 975, as shown on Map 58, and Lot 1005, as shown on Map 75, of said Application, as set forth by Land Court Order No. 29882.

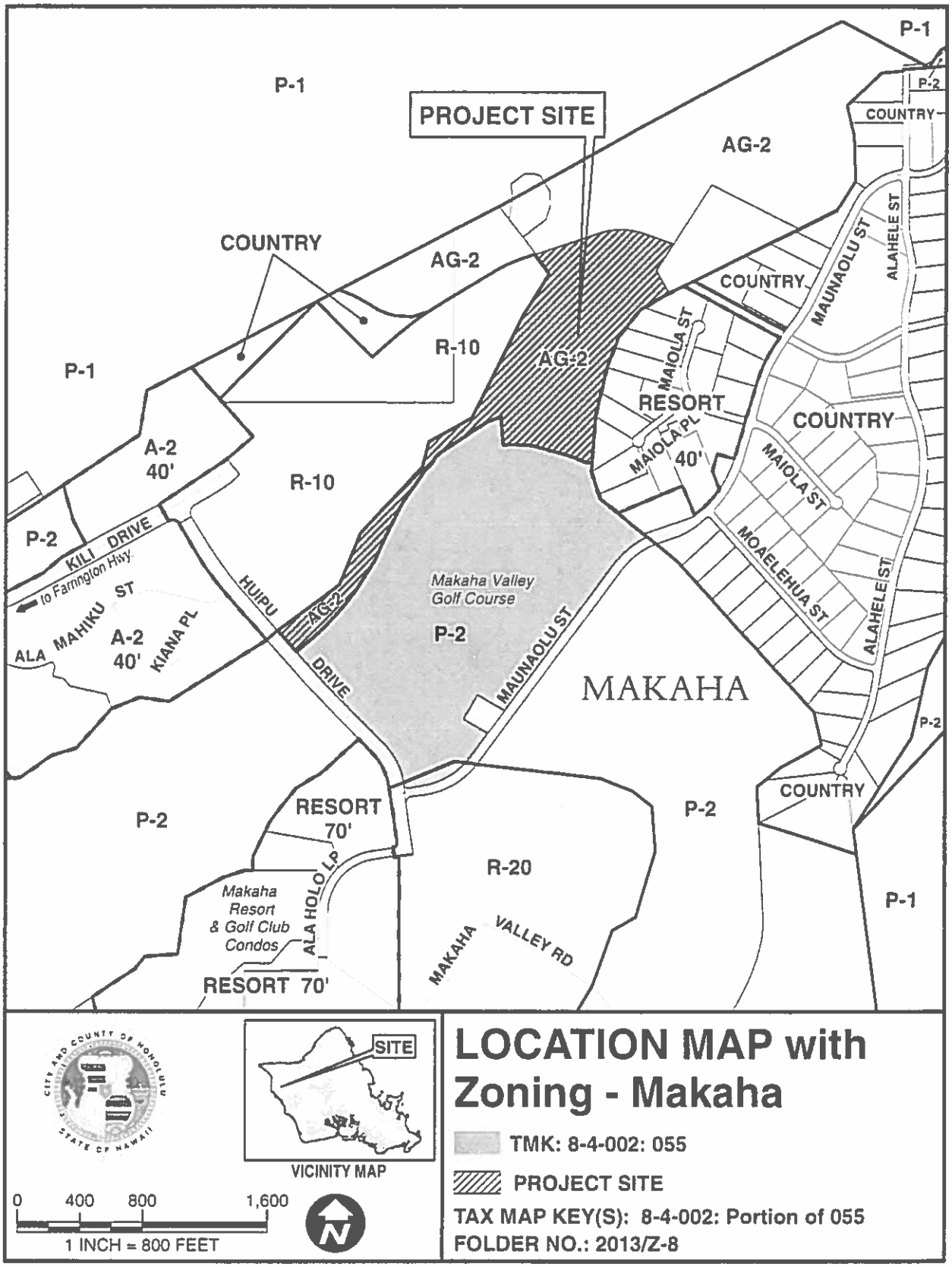
Together also with a right of way for road, utility and irrigation purposes across Lot 632, as shown on Map 15, Lot 649, as shown on Map 17, Lot 1429-C, as shown on Map 185, and Lot 1428, as shown on Map 171, of said Application.

Together also with a right of way across Easement "158", as shown on Map 156, across Lot 1025-B, Easement "159", as shown on Map 156, across Lot 1025-C, and Easement "160", as shown on Map 156, across Lot 1430-A, of said Application.

Together also with a right of way across Easement "157", as shown on Map 156, across Lot 1005, of said Application.

Being land conveyed to HAWAII MGCW LLC, a Hawaii limited liability company, by WARRANTY DEED dated January 16, 2014, recorded in the Office of the Assistant Registrar of the Land Court of the State of Hawaii as Document No. T-8803320, and duly noted on Land Court Certificate of Title No. 1,073,854.

EXHIBIT "B"
(Tax Map Key 8-4-002: 055)



Prepared by: Department of Planning & Permitting
City& County of Honolulu

Date Prepared: November 4, 2013

Copyright City & County of Honolulu
All Rights Reserved 2013