

PAUL R. MANCINI\*  
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—————  
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ROSALYN LOOMIS

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\*A LAW CORPORATION

**MANCINI, WELCH & GEIGER LLP**  
A LIMITED LIABILITY LAW PARTNERSHIP

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May 12, 2017

Via email: [lu.committee@mauicounty.us](mailto:lu.committee@mauicounty.us)

Chair Robert Carroll  
Maui County Council  
Land Use Committee

Re: Makila Kai: 201H Resolution and Land Use Reclassification  
Ordinance: Changes Following Last Wednesday's Meeting

Dear Chair Carroll:

Thank you for our meeting last Wednesday and the helpful points raised by you and all others in attendance.

To incorporate all suggestions, we are proposing changes to the 201H Resolution and the accompanying land use change Ordinance. I am enclosing the following:

- Proposed Exhibit A ("Modifications") to the 201H Resolution, making the Resolution conditional on the 2-year project construction start, the land use change Ordinance being adopted within 180 days, and the developer's obligation to complete development in 5 years.
- Revised Exhibit B to the 201H Resolution (clean and red-lined copies) incorporating Carla's suggestion to include the County Charter provision (and some other clarifications).
- Clean and red-lined copies of the proposed land use change Ordinance to incorporate its interdependence with the 201H Resolution, the 2-year construction start deadline and the 5-year project completion window.

To keep everyone informed, I am forwarding copies of this letter and enclosures to Jeff Ueoka, Carol Reimann, Buddy Almeida, Gary Saldana and Carla Nakata.

Chair Robert Carroll

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May 12, 2017

If you or the others have any questions, concerns or further changes, please let us know.

Very truly yours,

A handwritten signature in black ink, appearing to read "Tom Welch", with a long horizontal flourish extending to the right.

THOMAS D. WELCH, JR.  
Attorney for Makila Kai LLC

TDW:jt

Encls.

cc: Jeff Ueoka (*via email: Jeffrey.ueoka@co.maui.hi.us*)  
Carol Reimann (*via email: carol.reimann@co.maui.hi.us*)  
Buddy Almeida (*via email: buddy.almeida@co.maui.hi.us*)  
Gary Saldana (*via email: g.saldana@mauicounty.us*)  
Carla Nakata (*via email: carla.nakata@mauicounty.us*)  
Tom Schnell (*via email: tschnell@pbrhawaii.com*)  
Greg Brown (*via email: gregbrown@bdmaui.com*)

EXHIBIT "A"

Modifications

1. This Resolution, the Project approved by this Resolution and the exemptions set forth in Exhibit "B" shall all lapse and become void if (a) by the end of one hundred eighty (180) days from the effective date of this Resolution, Makila Kai LLC shall have failed to receive Maui County Council's approval, by duly adopted Ordinance, of a conditional land use boundary change from agricultural to rural, for the approximately 14.594 acres of land to contain the 25 residential workforce housing units; or (b) construction of the Project shall not have started by the second anniversary of the effective date of this Resolution. Start of construction shall mean the visible start of grading, pursuant to a valid grading permit as needed for the development of said 14.594 acres containing the 25 residential workforce housing units.

2. The Developer shall act in good faith and with its reasonable best efforts to complete construction of all of the 25 residential workforce housing units on the said 14.594 acres, with all related roads and infrastructure, not later than the fifth (5th) anniversary of the effective date of this Resolution.

## **EXHIBIT "B"**

### **EXEMPTIONS REQUESTED – MAKILA KAI**

MKL requests the following exemptions from the Maui County Code, pursuant to 201H-38, HRS.

#### **A. Exemption from Title 2, MCC, Administration and Personnel**

1. An exemption from Chapter 2.80B, MCC, General Plan and Community Plans, is requested to permit the project to proceed without obtaining an amendment to the West Maui Community Plan.

#### **B. Exemption from Title 12, MCC, Streets, Sidewalks, and Public Places**

1. An exemption from Chapter 12.08, MCC, Driveways, is requested to exempt the project from those driveway permit and inspection fees that are applicable to the 25 workforce housing units.

#### **C. 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, are requested to exempt the project 25 workforce housing units from fire, electrical, plumbing, and building permit fees, as well as inspection fees.
2. An exemption from Section 16.04C.440, MCC, an amendment to the Fire Code for dead-end roads, is requested to waive the 32 foot pavement width requirement on Road "A" and Road "B" provided the following measures are implemented:
  - House lots accessed from Roads "A" and "B" will be greater than 20,000 square feet in area;
  - Subdivision design will prohibit parking on the street pavement at all times using appropriate regulatory signs; and
  - The Homeowners' Association will have the responsibility, means, and authority to enforce this parking restriction.

#### **D. Exemptions from Title 18, MCC, Subdivisions**

1. Exemptions from Section 18.04.030, MCC, Administration, and Section 18.16.020, MCC, Compliance, is requested to exempt the project from obtaining a change in zoning and community plan amendment.

2. An exemption from Section 18.16.050, MCC, Minimum Right-Of-Way and Pavement Widths, is requested to waive the requirement to widen the Punakea Loop pavement.
3. Exemptions from Section 18.16.130, MCC, Cul-de-sacs, is requested to allow the Road “B” cul-de-sac to: 1) exceed 550 feet in length; and 2) serve more than 20 lots. A truck turnaround and fire lane will be constructed to ensure that emergency access is not compromised by these exemptions.
4. An exemption from the County of Maui Department of Public Works’ guidelines to provide bicycle and pedestrian improvements in excess of Title 18, MCC, Subdivisions, is requested to waive the requirement to provide bicycle and pedestrian improvements needed to fully comply with Maui County’s “Complete Streets” policy. Rather, pedestrian connectivity improvements will be provided according to the project site plan.
5. An exemption from Section 18.16.220~~120~~, Half Streets, is requested to allow half streets within the project.
6. An exemption from Section 18.16.220, Lots—Size and Shape, is requested to allow lot sizes, widths, shapes, and orientation, and minimum building setback lines within the project that are not in conformance with the provisions of Title 19, Chapter 19.30A, MCC, Agricultural District.
7. An exemption from Section 18.16.230, Lots—Minimum Sizes is requested to allow lot sizes within the project that are not in conformance with the provisions of Title 19, Chapter 19.30A, MCC, Agricultural District.
8. An exemption from Section 18.16.320, MCC, Parks and Playgrounds, is requested to exempt the project from park dedication requirements; however the project will include a neighborhood park approximately 1.3 acres in size and a 500-foot wide open space “greenbelt,” totaling approximately 20 acres, between the Lahaina Bypass Highway and the closest rural residential property line.

#### **E. Exemption from Title 19, MCC, Zoning**

1. An exemption from Chapter 19.30A, MCC, Agricultural District, is requested to permit the development and use of the subject parcels for single-family residential purposes. The project shall be exempt from all development design standards set forth in Chapter 19.30A. Further, this exemption shall allow the subdivision of the property in the plat configuration shown in the project site plan. The project will be in conformance with the Rural District standards set forth under Section 19.29.020 MCC. Lot Allocation Agreements with the County of Maui recorded pursuant to MCC 19.30A.030 shall not apply to Makila Kai.
2. Pursuant Section 205-3.1, HRS and Section 19.68.040, MCC, the Maui County Council shall be the decision-making authority for the requested state land use district boundary change/reclassification to reclassify the approximately 14.6 acres of the Property containing the half-acre workforce home lots from the State Agricultural District to the

State Land Use Rural District. ~~An exemption~~Exemptions from Section 19.68.020, MCC, Applications, ~~and~~; Section 19.68.030, MCC, Procedures, ~~is~~; and Section 8-8.4, Maui County Charter, are requested to exempt the project from: 1) the need to file an application for a boundary change/reclassification of state land use district boundaries for the approximately 14.6 acres of the Property containing the half-acre workforce home lots; and 2) the procedures associated with such applications, including the requirement for the Maui Planning Commission to conduct a public hearing on the requested boundary change/reclassification. However, MKL is not requesting an exemption to Section 19.68.040, MCC, which provides for the Maui County Council to: 1) consider the boundary change/reclassification; 2) hold hearings; 3) take evidence and testimony; 4) be the decision-making authority on the boundary change/reclassification; and 5) impose conditions upon the use of the property to prevent adverse effects upon public health, safety and welfare.

#### **F. Exemption from Title 20, MCC, Environmental Protection**

1. An exemption from Section 20.08.090, MCC, Grubbing and Grading Permit Fees, is requested to exempt the project development of the 14.594-acre portion of the project containing the 25 workforce housing units from grubbing, grading, and excavation permit fees, as well as inspection fees.

#### **G. Exemption from Chapter 8.04, MCC, Refuse Collection and Landfills**

1. An exemption from Chapter 8.04.~~040050~~, MCC, Refuse Disposal Fees, is requested to exempt the project development of the 25 workforce housing units from refuse disposal fees.

#### **H. Exemption from Chapter 14.62, MCC, Impact Fees for Traffic and Roadway Improvements in West Maui, Hawaii**

1. An exemption from Chapter 14.62, MCC, Traffic and Roadway Improvements in West Maui, Hawai'i, is requested to exempt the project development of the 25 workforce housing units from traffic impact fees.

## **EXHIBIT "B"**

### **EXEMPTIONS REQUESTED – MAKILA KAI**

MKL requests the following exemptions from the Maui County Code, pursuant to 201H-38, HRS.

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  - House lots accessed from Roads "A" and "B" will be greater than 20,000 square feet in area;
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4. An exemption from the County of Maui Department of Public Works’ guidelines to provide bicycle and pedestrian improvements in excess of Title 18, MCC, Subdivisions, is requested to waive the requirement to provide bicycle and pedestrian improvements needed to fully comply with Maui County’s “Complete Streets” policy. Rather, pedestrian connectivity improvements will be provided according to the project site plan.
5. An exemption from Section 18.16.120, Half Streets, is requested to allow half streets within the project.
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2. Pursuant Section 205-3.1, HRS and Section 19.68.040, MCC, the Maui County Council shall be the decision-making authority for the requested state land use district boundary change/reclassification to reclassify the approximately 14.6 acres of the Property containing the half-acre workforce home lots from the State Agricultural District to the

State Land Use Rural District. Exemptions from Section 19.68.020, MCC, Applications; Section 19.68.030, MCC, Procedures; and Section 8-8.4, Maui County Charter, are requested to exempt the project from: 1) the need to file an application for a boundary change/reclassification of state land use district boundaries for the approximately 14.6 acres of the Property containing the half-acre workforce home lots; and 2) the procedures associated with such applications, including the requirement for the Maui Planning Commission to conduct a public hearing on the requested boundary change/reclassification. However, MKL is not requesting an exemption to Section 19.68.040, MCC, which provides for the Maui County Council to: 1) consider the boundary change/reclassification; 2) hold hearings; 3) take evidence and testimony; 4) be the decision-making authority on the boundary change/reclassification; and 5) impose conditions upon the use of the property to prevent adverse effects upon public health, safety and welfare.

**F. Exemption from Title 20, MCC, Environmental Protection**

1. An exemption from Section 20.08.090, MCC, Grubbing and Grading Permit Fees, is requested to exempt the development of the 14.594-acre portion of the project containing the 25 workforce housing units from grubbing, grading, and excavation permit fees, as well as inspection fees.

**G. Exemption from Chapter 8.04, MCC, Refuse Collection and Landfills**

1. An exemption from Chapter 8.04.050, MCC, Refuse Disposal Fees, is requested to exempt the development of the 25 workforce housing units from refuse disposal fees.

**H. Exemption from Chapter 14.62, MCC, Impact Fees for Traffic and Roadway Improvements in West Maui, Hawaii**

1. An exemption from Chapter 14.62, MCC, Traffic and Roadway Improvements in West Maui, Hawai'i, is requested to exempt the development of the 25 workforce housing units from traffic impact fees.

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT POLANUI, LAUNIUPOKO, LAHAINA, MAUI, HAWAII, TAX MAP KEY NOS. (2) 4-7-13:4 (POR.) AND (2) 4-7-13:5 (POR.), CONTAINING A TOTAL OF 14.594 ACRES

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Section 205-3.1, Hawaii Revised Statutes, and Chapter 19.68, Maui County Code, the State Land Use District Classification is reclassified from the Agricultural District to the Rural District (Conditional Boundary Amendment) for that certain land situated at Polanui, Launiupoko, Lahaina, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Nos. (2) 4-7-13:4 (por.) and (2) 4-7-13:5 (por.), containing a total of 14.594 acres, and more particularly described in Exhibit "A" attached hereto and made a part hereof, and shown on the map attached hereto as Exhibit "B" entitled "Proposed Workforce Housing Area".

SECTION 2. Pursuant to Section 19.68.040, Maui County Code, the State Land Use District classification granted by this ordinance is subject to the conditions set forth in Exhibit "C" hereto and in the Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment, attached hereto and made a part hereof as Exhibit "D", which shall be executed and recorded in the Bureau of Conveyances of the State of Hawaii.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel  
County of Maui

EXHIBIT "A"

[Description of Property]

EXHIBIT "B"

[Map]

EXHIBIT "C"

CONDITIONS

1. This ordinance is conditional upon the Council's passage of a Resolution approving, with modifications, the independent development of Makila Kai pursuant to Section 201H-38, Hawaii Revised Statutes (the "201H Resolution").

2. If the 201H Resolution shall expire due to the developer's failure to start physical construction on the Property by the time deadline set forth in the 201H Resolution, this ordinance shall also terminate concurrently with the expiration of the 201H Resolution.

3. Developer shall act in good faith and with its reasonable best efforts to complete all of the twenty-five (25) residential workforce housing units on the Property with all related roads and infrastructure not later than the fifth (5th) anniversary of the Effective Date of the 201H Resolution.

4. The Property shall be developed as a 100% workforce housing project in accordance with the 201H Resolution.

5. The Property shall be developed in substantial compliance with the representations made to the Maui County Council in obtaining the State District Boundary Amendment.

EXHIBIT "D"

[Unilateral Agreement and Declaration of Conditions]

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ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT POLANUI, LAUNIUpoko, LAHAINA, MAUI, HAWAII, TAX MAP KEY NOS. (2) 4-7-13:4 (POR.) AND (2) 4-7-13:5 (POR.), CONTAINING A TOTAL OF 14.594 ACRES

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Section 205-3.1, Hawaii Revised Statutes, and Chapter 19.68, Maui County Code, the State Land Use District Classification is reclassified from the Agricultural District to the Rural District (Conditional Boundary Amendment) for that certain land situated at Polanui, Launiupoko, Lahaina, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Nos. (2) 4-7-13:4 (por.) and (2) 4-7-13:5 (por.), containing a total of 14.594 acres, and more particularly described in Exhibit "A" attached hereto and made a part hereof, and shown on the map attached hereto as Exhibit "B" entitled "Proposed Workforce Housing Area".

SECTION 2. Pursuant to Section 19.68.040, Maui County Code, the State Land Use District classification granted by this ordinance is subject to the conditions set forth in Exhibit "C" hereto and in the Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment, attached hereto and made a part hereof as Exhibit "D", which shall be executed and recorded in the Bureau of Conveyances of the State of Hawaii.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Deputy Corporation Counsel  
County of Maui

## EXHIBIT "A"

### Makila Kai Proposed Workforce Housing Area

Land situated on the westerly side of Hāniu Street at Polanui, Launiupoko, Lahaina, Maui, Hawaii

Being portions of Lots 4 and 5 of Makila Ranches - Phase 1, being also portions of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10) and Royal Patent 1358, Land Commission Award 82 to Thomas Phillips

Beginning at a point at the northeasterly corner of this land, the azimuth and distance from the northwesterly corner of Lot 4 of the Makila Ranches - Phase 1 being: 248° 58' 255.24 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAUNIUpoko" being: 5,911.65 feet North and 7,136.02 feet West and running by azimuths measured clockwise from True South:

1. 321° 30' 951.37 feet along the remainder of Lot 4 of Makila Ranches - Phase 1, being also along the remainders of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10) and Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to a point;
2. Thence along the remainder of Lot 4 of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips on a curve to the left, having a radius of 1,793.00 feet, the chord azimuth and distance being: 319° 00' 156.42 feet to a point;

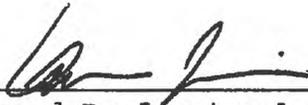
3. 316° 30' 330.24 feet along same to a point;
4. 46° 09' 188.72 feet along same to a point;
5. 136° 01' 58.27 feet along same to a point;
6. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 290° 28' 14", and the point of tangency azimuth from the radial point being: 321° 47' 42", having a radius of 47.00 feet, the chord azimuth and distance being: 36° 07' 58" 25.38 feet to a point;
7. 316° 01' 99.51 feet along same to a point;
8. 44° 31' 190.77 feet along the remainders of Lots 4 and 5 of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to a point;
9. 136° 00' 498.25 feet along the remainder of Lot 5 of of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to a point;
10. Thence along same on a curve to the right having a radius of 3,350.00 feet, the chord azimuth and distance being: 139° 45' 438.20 feet to a point;

11. 143° 30' 709.97 feet along the remainder of Lot 5 of Makila Ranches - Phase 1, being also along the remainders of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips and Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10) to a point;
12. Thence along the southerly side of Lot 12 (Punakea Street) of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10), on a curve to the right with the point of curvature azimuth from the radial point being: 145° 01' 38", and the point of tangency azimuth from the radial point being: 158° 58', having a radius of 230.00 feet, the chord azimuth and distance being: 241° 59' 49" 55.82 feet to a point;
13. 248° 58' 360.26 feet along same to the point of beginning and containing an Area of 14.594 Acres.



WARREN S. UNEMORI ENGINEERING, INC.

Wells Street Professional Center  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
November 10, 2016

BY:  04/30/18 Exp.  
Licensed Professional Land Surveyor  
Certificate No. 10008

Note: This metes and bounds description has been prepared for the Makila Kai 201H Application; therefore, described courses do not necessarily reflect boundaries of existing land parcels.

V:\Projdata\16prof\16019\Survey\Desc-Workforce-Housing-Area\_rev03.wpd

**EXHIBIT "B"**

D:\proj\04-006\dwg\maps\DBA-map00.dwg

RP 8395, L.C. AM. 8559-B APANA 25 TO WM. C. LUNALILLO  
 (CERTIFICATE OF BOUNDARIES NO. 10)

5,911.65 N  
 7,136.02 W  
 "LAUNIUPOKO" Δ

246°58'  
 380.26

241°59'49"  
 55.82

145°01'38"  
 R=230.00

321°30'  
 951.37

143°30'  
 709.97

139°45'  
 438.20

318°00'  
 156.42

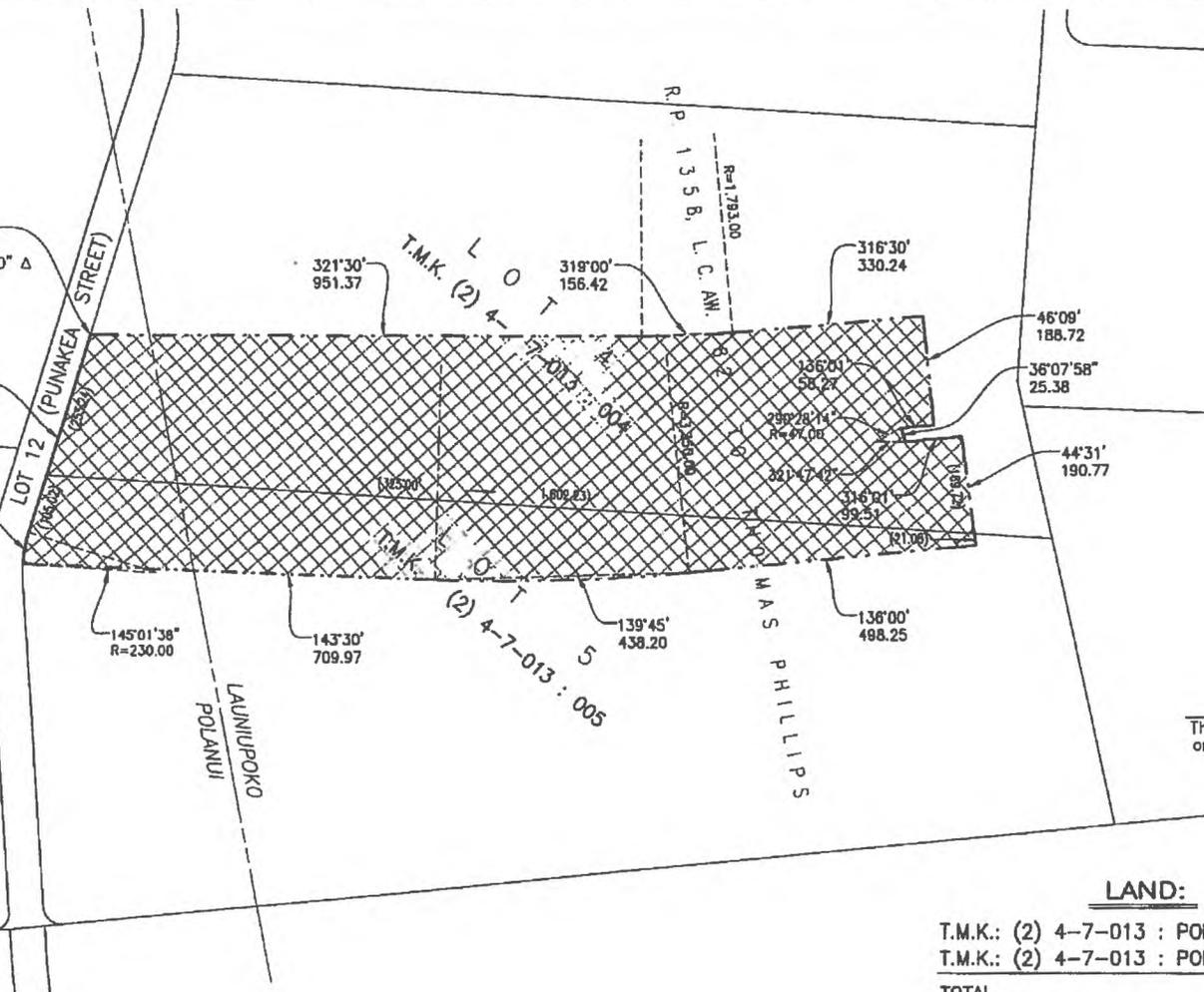
316°30'  
 330.24

46°09'  
 188.72

36°07'58"  
 25.38

44°31'  
 190.77

138°00'  
 498.25



TRUE NORTH  
 SCALE: 1 IN. = 200 FT.



*[Signature]* 11/2/2016  
 This map was prepared by me Date  
 or under my supervision.

LAND:	AREA:
T.M.K.: (2) 4-7-013 : PORTION OF 004	10.320 ACRES
T.M.K.: (2) 4-7-013 : PORTION OF 005	4.274 ACRES
<b>TOTAL</b>	<b>14.594 ACRES</b>

**EXHIBIT MAP**  
 PROPOSED WORKFORCE HOUSING AREA

EXHIBIT "C"

CONDITIONS

1. This ordinance is conditional upon the Council's passage of a Resolution approving, with modifications, the independent development of Makila Kai pursuant to Section 201H-38, Hawaii Revised Statutes (the "201H Resolution").

2. If the 201H Resolution shall expire due to the developer's failure to start physical construction on the Property by the time deadline set forth in the 201H Resolution, this ordinance shall also terminate concurrently with the expiration of the 201H Resolution.

3. Developer shall act in good faith and with its reasonable best efforts to complete all of the twenty-five (25) residential workforce housing units on the Property with all related roads and infrastructure not later than the fifth (5th) anniversary of the effective date of the 201H Resolution.

4. The Property shall be developed as a 100% workforce housing project in accordance with the 201H Resolution.

5. The Property shall be developed in substantial compliance with the representations made to the Maui County Council in obtaining the State District Boundary Amendment.

EXHIBIT "D"

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail ( ) Pickup ( ) To:

Tax Key: (2) 4-7-13:4 (por.)

Total No. of Pages: \_\_\_\_\_

Tax Key: (2) 4-7-13:5 (por.)

UNILATERAL AGREEMENT AND DECLARATION OF CONDITIONS  
FOR STATE LAND USE DISTRICT BOUNDARY AMENDMENT

THIS INDENTURE, made this 3rd day of May, 2017, by MAKILA KAI LLC, a Hawaii limited liability company, whose principal place of business is located in Lahaina, Maui, Hawaii, and whose mailing address is P. O. Box 1060, Lahaina, Hawaii 96761, hereinafter referred to as "Declarant", and who is the owner of that certain land located at Polanui, Launiupoko, Lahaina, Maui, Hawaii, comprised of approximately 14.594 acres and identified for real property tax purposes by Tax Map Key Nos. (2) 4-7-13:4 (por.) and (2) 4-7-13:5 (por.), hereinafter referred to as the "Property".

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawaii, hereinafter referred to as "Council", is considering the Declarant's Petition for a State land use district boundary amendment for the Property, comprised of approximately 14.594

acres, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and is shown on the map attached hereto as Exhibit "2"; and

WHEREAS, Declarant proposes to develop a 100% workforce housing project on the Property under the name "Makila Kai"; and

WHEREAS, the Council recommends through its Land Use Committee Report No. \_\_\_\_\_, that the State Land Use District Boundary Amendment be approved for passage on first reading subject to certain conditions, pursuant to Section 19.68.040, Maui County Code, said passage to be conditional upon the Council's passage of a resolution approving, with modifications, the independent development of Makila Kai pursuant to Section 201H-38, Hawaii Revised Statutes (the "201H Resolution"); and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the State land use district boundary amendment provisions of Section 19.68.040, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.68.040, Maui County Code, relating to State land use district boundary amendments;

2. That, until written release by the County of Maui, the Property, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which are set forth on Exhibit "3" attached hereto and which shall be effective as to and shall run with the land as to the Property, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawaii, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Property

the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration;

3. That this Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the Declarant notifies the appropriate County Department that any of said covenants, conditions and restrictions are satisfied by the Declarant, and the appropriate County Department verifies the satisfaction and provides a written release of the covenant, condition or restriction;

4. That the term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors and assigns;

5. That the Declaration shall become fully effective on the effective date of the ordinance approving the establishment of the Rural State land use district boundary amendment and that this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawaii;

6. That the Declarant agrees to develop the Property in conformance with the conditions set forth in Exhibit "3", which is attached hereto and made a part hereof and which shall be made a part of the State land use district boundary amendment ordinance;

7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use;

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that, until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors and any other persons who claim an interest in said land, and the County of Maui shall

have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons.

IN WITNESS WHEREOF, the undersigned has executed this Agreement the day and year first above written.

DECLARANT:

MAKILA KAI LLC

By   
\_\_\_\_\_  
GREG BROWN  
\_\_\_\_\_  
Its Member \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGALITY:

\_\_\_\_\_  
Corporation Counsel  
County of Maui

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On May 3, 2017, before me personally appeared GREG BROWN, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 11-page Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment, dated May 3, 2017, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



Joyce M. Takitani  
Print Name: Joyce M. Takitani  
Notary Public, State of Hawaii.

My commission expires: 8/16/2019

EXHIBIT "1"

**Makila Kai  
Proposed Workforce Housing Area**

Land situated on the westerly side of Hāniu Street at Polanui, Launiupoko, Lahaina, Maui, Hawaii

Being portions of Lots 4 and 5 of Makila Ranches - Phase 1, being also portions of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10) and Royal Patent 1358, Land Commission Award 82 to Thomas Phillips

Beginning at a point at the northeasterly corner of this land, the azimuth and distance from the northwesterly corner of Lot 4 of the Makila Ranches - Phase 1 being: 248° 58' 255.24 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAUNIUPOKO" being: 5,911.65 feet North and 7,136.02 feet West and running by azimuths measured clockwise from True South:

1. 321° 30' 951.37 feet along the remainder of Lot 4 of Makila Ranches - Phase 1, being also along the remainders of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10) and Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to a point;
2. Thence along the remainder of Lot 4 of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips on a curve to the left, having a radius of 1,793.00 feet, the chord azimuth and distance being: 319° 00' 156.42 feet to a point;

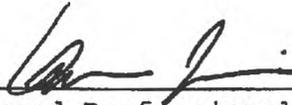
3. 316° 30' 330.24 feet along same to a point;
4. 46° 09' 188.72 feet along same to a point;
5. 136° 01' 58.27 feet along same to a point;
6. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 290° 28' 14", and the point of tangency azimuth from the radial point being: 321° 47' 42", having a radius of 47.00 feet, the chord azimuth and distance being: 36° 07' 58" 25.38 feet to a point;
7. 316° 01' 99.51 feet along same to a point;
8. 44° 31' 190.77 feet along the remainders of Lots 4 and 5 of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to a point;
9. 136° 00' 498.25 feet along the remainder of Lot 5 of of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to a point;
10. Thence along same on a curve to the right having a radius of 3,350.00 feet, the chord azimuth and distance being: 139° 45' 438.20 feet to a point;

11. 143° 30' 709.97 feet along the remainder of Lot 5 of Makila Ranches - Phase 1, being also along the remainders of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips and Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10) to a point;
12. Thence along the southerly side of Lot 12 (Punakea Street) of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10), on a curve to the right with the point of curvature azimuth from the radial point being: 145° 01' 38", and the point of tangency azimuth from the radial point being: 158° 58', having a radius of 230.00 feet, the chord azimuth and distance being: 241° 59' 49" 55.82 feet to a point;
13. 248° 58' 360.26 feet along same to the point of beginning and containing an Area of 14.594 Acres.



WARREN S. UNEMORI ENGINEERING, INC.

Wells Street Professional Center  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
November 10, 2016

BY:  04/30/18 Exp.  
Licensed Professional Land Surveyor  
Certificate No. 10008

Note: This metes and bounds description has been prepared for the Makila Kai 201H Application; therefore, described courses do not necessarily reflect boundaries of existing land parcels.

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EXHIBIT "2"

RP 8395, L.C.M. 8559-B APANA 25 TO W.M.C. LUNALILLO  
(CERTIFICATE OF BOUNDARIES NO. 10)

5,911.65 N  
7,136.02 W  
"LAUNIPOKO" Δ

248°58'  
360.26

241°59'49"  
55.82

145°01'38"  
R=230.00

143°30'  
709.97

LAUNIPOKO  
POLANUI

321°30'  
951.37

T.M.K. (2) 4-7-013 : 004

319°00'  
156.42

T.M.K. (2) 4-7-013 : 005

139°45'  
438.20

R.P. 1358, L.C.M.  
R=1,793.00

THOMAS PHILLIPS

316°30'  
330.24

136°01'  
58.27

239°28'14"  
R=47.08

321°47'42"

316°01'  
99.51

136°00'  
498.25

46°09'  
188.72

36°07'58"  
25.38

44°31'  
190.77

TRUE NORTH  
SCALE: 1 IN. = 200 FT.



*[Signature]* 11/2/2016  
This map was prepared by me Date  
or under my supervision.

LAND:	AREA:
T.M.K.: (2) 4-7-013 : PORTION OF 004	10.320 ACRES
T.M.K.: (2) 4-7-013 : PORTION OF 005	4.274 ACRES
<b>TOTAL</b>	<b>14.594 ACRES</b>

EXHIBIT MAP  
PROPOSED WORKFORCE HOUSING AREA

EXHIBIT "3"

CONDITIONS

1. The Property shall be developed as a 100% workforce housing project in accordance with the 201H Resolution.

2. The Property shall be developed in substantial compliance with the representations made to the Maui County Council in obtaining the State District Boundary Amendment.