

REQUEST FOR LEGAL SERVICES

Date: July 10, 2019

From: Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: David Galazin, Esq.

Subject: COMMUNITY PLAN AMENDMENT, DISTRICT BOUNDARY AMENDMENT, AND CHANGE IN ZONING FOR HUI NO`EAU (MAKAWAO) (PSLU-33)

Background Data: Please review and, if appropriate, approve as to form and legality the attached unilateral agreements (three signed and notarized originals).

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature <u>Tamara A. M. Paltin</u> Tamara Paltin	Contact Person <u>James Krueger or John Rapacz</u> (Telephone Extension: <u>7761 or 7886, respectively</u>)
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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): July 11, 2019 at 8:45 a.m.

REASON: For posting on July 12 for the July 19 Council meeting agenda

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)

pslu:ltr:033acc02:jgk/jsr

Attachment

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail () Pickup () : To:

Office of the County Clerk

County of Maui

200 South High Street

Wailuku, Hawai'i 96793

Total Number of Pages: _____

Affects Tax Map Key (Maui) **(2) 2-4-002:006 (portion)**
(2) 2-4-002:011

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this _____ day of _____, 2019, hereinafter referred to as "DECLARATION" or "UNILATERAL AGREEMENT", by Hui Noeau, a Hawaii nonprofit corporation whose principal place of business and mailing address is located in 2841 Baldwin Avenue, Makawao, Hawaii 96768, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Makawao, Maui, Hawai'i, comprised of approximately 14.775 acres, and identified for real property tax purposes by Tax Map Key No(s). (2) 2-4-002:006 (portion) and (2) 2-4-002:011, hereinafter referred to as "PROPERTY".

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i, hereinafter referred to as "Council", is considering the establishment of zoning for the Property, comprised of approximately 14.775 acres, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and which is more particularly identified in Land Zoning Map No.

L-1091, which is attached hereto and made a part hereof as Exhibit "2"; and

WHEREAS, the Council recommends through its Planning and Sustainable Land Use Committee, Committee Report No. _____, that said establishment of zoning be approved for passage on first reading subject to certain conditions, pursuant to Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the conditional zoning provisions of Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.510.050, Maui County Code, relating to conditional zoning;

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 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 Hawai'i, 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 zoning ordinance approving the establishment of P-1 Public/Quasi-Public District zoning and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawai'i;

6. That the Declarant agrees to develop said 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 zoning 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 owners, 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, provided that the Declarant or its successors and assigns may at any time file a petition for the removal of the conditions and terminate this Unilateral Agreement, such petition to be processed in the same manner as petitions for change in zoning.

This Declaration may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Declaration.

Each person signing this Unilateral Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Unilateral Agreement. Each party represents and warrants to the other that the execution and delivery of this Unilateral Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

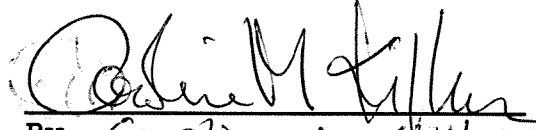
[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGES FOLLOW]

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

DECLARANT:

Hui Noeau


By Caroline M. Killam
Its Executive Director

APPROVED AS TO FORM AND LEGALITY:

DAVID GALAZIN
Deputy Corporation Counsel
County of Maui

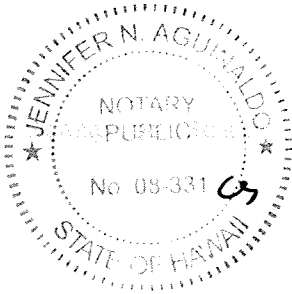
STATE OF HAWAII

)
) SS.
)

COUNTY OF MAUI

On this 10th day of July, 2019, before me personally appeared Caroline McGlynn-Kilpatrick to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Jennifer N. Aguinaldo

Notary Public, State of _____

Print Name: JENNIFER N. AGUINALDO

My Commission Expires: 08/10/2020
My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION

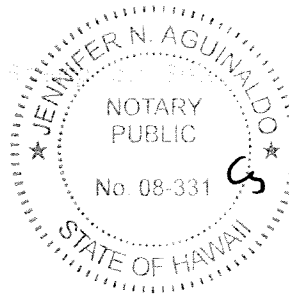
Doc. Date: JUL 10 2019 undated # Pages: 10

Notary Name: JENNIFER N. AGUINALDO Judicial Circuit: Second

Document Description: Unilateral Agreement and Declaration for Conditional Zoning

Notary Signature: Jennifer N. Aguinaldo

Date: JUL 10 2019



LAND DESCRIPTION

Tax Map Key (2) 2-4-002:006(Portion) and 011

Land situated between Baldwin Avenue and Kaluanui Road at Haliimaile, Hamakuapoko, Makawao, Island and County of Maui, State of Hawaii.

Being portion of Lot 1 of Maui Pineapple Co., Ltd Lease, L.U.C.A. File No. 2.393 and all of Lot 2-A-1-A of H. A. Baldwin "Kaluanui" House Lots, Subdivision File No. 2.2242, being a portion of Royal Patent 7512, Land Commission Award 11,216, Apana 27 to Kehaunohi.

Beginning at a found 1/2point at the northernmost corner of this parcel of land, along the south side of Kaluanui Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PIIHOLO" being 7,513.72 feet North and 4,062.59 feet West and running by azimuth measured clockwise from true South (meridian of said "PIIHOLO"),

1. 301° 54' 30" 375.50 feet along Lot 2-A-1-B of H. A. Baldwin, "Kaluanui" House Lot Subdivision, Subdivision File No. 2.2242 to a ½ inch pipe; thence,
2. 309° 42' 186.00 feet along the same to a ½ inch pipe; thence,
3. 347° 40' 168.41 feet along Lot 2-A-1-C of H. A. Baldwin "Kaluanui" House Lot Subdivision, Subdivision File No. 2.2242 to a ½ inch pipe; thence,
4. 347° 20' 162.00. feet along the same to a ½ inch pipe; thence,
5. 358° 00' 38.07 feet along Lot 2-B-1 of H. A. Baldwin "Kaluanui" House Lot Subdivision, Subdivision File No. 2.2214 to a ½ inch pipe, thence,
6. 34° 34' 300.76 feet along the same to a ½ inch pipe; thence,
7. 42° 38' 177.80 feet along the same to a ½ inch pipe; thence,
8. Along Baldwin Avenue on a curve to the left with a radius of 751.00 feet and a central angle° of 21°31' 51", the chord azimuth and distance being
131° 42' 59" 280.56 feet to a ½ inch pipe; thence,

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EXHIBIT "1"

- | | | |
|-----|--------------|---|
| 9. | 115° 47' | 95.63 feet along the same to a ½ inch pipe; thence, |
| 10. | 110° 36' | 121.67 feet along the same to a ½ inch pipe; thence, |
| 11. | 151° 13' | 454.41 feet along portion of Lot 1 of Maui Pineapple Co., Ltd.,
Lease, LUCA File No. 2.393 to a point; thence, |
| 12. | 177° 10' | 361.02 feet along the remainder of Lot 1 of Maui Pineapple Co., Ltd. Lease, LUCA File No. 2.393 to a point; thence, |
| 13. | 265° 06' | 97.60 feet along the south side of Kaluanui Road to a point; thence, |
| 14. | 261° 26' | 63.70 feet along the same to a ½ inch pipe; thence, |
| 15. | 327° 30' | 8.63 feet along the same to a ½ inch pipe; thence, |
| 16. | 266° 10' 20" | 238.10 feet along the same to the point of beginning and containing an area of 14.775 acres, more less. |

Note: This metes and bounds description has been prepared for change in Zoning, Land Use District Boundary Amendment and Community Plan Amendment purposes only.

This work was prepared by me
or under my direct supervision.
VALERA, INC

Edgardo V. Valera
Edgardo V. Valera *Exp 9/22*
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 5076
End of description.
8178ACPKaluanui

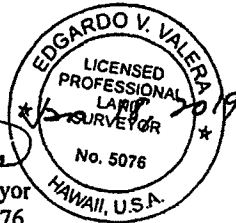


Exhibit "3"

1. Hui Noeau and any future owner or lessee must solicit from the Urban Design Review Board and the State Historic Preservation Division, and provide to the Department of Planning, comments on plans for any new building prior to the Department of Planning recommending approval of a building permit for the new building.

2. Hui Noeau and any future owner or lessee must only develop the property in a manner that protects the rural and agricultural character of the area; supports art and cultural education; and is in substantial compliance with the submittals and representations made to the Maui County Council and the Council's Planning and Sustainable Land Use Committee on June 19, 2019, and prior to the Change in Zoning to P-1 Public/Quasi-Public District.