

ORDINANCE NO. 3686

BILL NO. 74 (2009)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII

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

SECTION 1. Pursuant to Chapters 19.31 and 19.510, Maui County Code, a change in zoning from Agricultural District to P-1 Public/Quasi-Public District (Conditional Zoning) is hereby granted for that certain parcel of land situated at Wailuku, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2)3-5-002:011, comprising approximately 25.263 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-423, which is on file at the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 2. Pursuant to Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the conditions set forth in Exhibit "B", attached hereto and made a part hereof, and the Unilateral Agreement and Declaration for Conditional Zoning, attached hereto and made a part hereof as Exhibit "C".

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

APPROVED AS TO FORM
AND LEGALITY



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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RECEIVED AT LU MEETING ON 8/22/08
from Vice-Chair Hokemus

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Grant 3152 to Henry Cornwell and Grant 3343 to Claus Spreckels) situate, lying and being on the easterly side of Honoapiilani Highway (F.A.P. No. 13-G) at Waikapu and Wailuku, Island and County of Maui, State of Hawaii, being LOT A of the "WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3" and thus bounded and described:

Beginning at a point at the southwesterly corner of this lot, being also the northwesterly corner of Lot B of Waikapu East (Large-Lot) Subdivision No. 3, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 5,563.76 feet south and 2,085.73 feet west and running by azimuths measured clockwise from true South:

1. 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: 271° 55' 48" and the point of tangency azimuth from the radial point being: 262° 39' 11", having a radius of 2,899.93 feet, the chord azimuth and distance being: 177° 17' 29.5" 469.02 feet to a point;
2. 172° 39' 11" 865.57 feet along same to a point;
3. 241° 16' 878.02 feet along R. P. 4529-B and 4549, L. C. Aw. 71 to Michael J. Nowlein, being also along Lot 9-A of Waiale Road and Kuikahi Drive Extension Subdivision to a point;
4. Thence along the remainder of Grant 3343 to Claus Spreckels, being also along Lot L of Waikapu East (Large-Lot) Subdivision No. 3 on a curve to the right with the

point of curvature azimuth
from the radial point being:
104° 32' 45" and the point
of tangency azimuth from the
radial point being: 284°
39' 17", having a radius of
1,600.00 feet, the chord
azimuth and distance being:
14° 36' 01" 3.04 feet to a
point;

5. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 104° 39' 17" and the point of tangency azimuth from the radial point being: 99° 00', having a radius of 1,600.00 feet, the chord azimuth and distance being: 11° 49' 38.5" 157.85 feet to a point;
6. 9° 00' 84.93 feet along same to a point;
7. Thence along same on a curve to the left, having a radius of 1,560.00 feet, the chord azimuth and distance being: 354° 03' 30" 804.45 feet to a point;
8. 339° 07' 622.61 feet along the remainders of Grant 3343 to Claus Spreckels and Grant 3152 to Henry Cornwell, being also along Lot L of Waikapu East (Large-Lot) Subdivision No. 3 to a point;
9. 82° 00' 904.67 feet along the remainder of Grant 3343 to Claus Spreckels, being also along Lot B of Waikapu East (Large-Lot) Subdivision No. 3 to the point of beginning and containing an area of 25.263 acres, more or less.

EXHIBIT "B"

CONDITIONS OF ZONING

1. That, in order to prevent impacts to water resources, and all to the satisfaction of either the Department of Water Supply (DWS), the Department of Public Works (DPW), or the Department of Planning (Department), Emmanuel Lutheran Church of Maui shall employ construction mitigations as follows: adopt best management practices designed to minimize infiltration and runoff from construction and vehicle operations; prevent cement products, oil, fuel, and other toxic substances from falling or leaching into the water; properly and promptly dispose of all loosened and excavated soil and debris material from drainage structure work; retain ground cover until the last possible date; stabilize denuded areas by sodding or planting as soon as possible, which should involve replanting to include soil amendments, fertilizers, and temporary irrigation, and use of high seeding rates to ensure rapid stand establishment; avoid fertilizers and biocides, or apply only during periods of low rainfall to minimize chemical run-off; and keep run-off on-site.
2. That, in order to conserve water, and all to the satisfaction of either the DWS or the Department, Emmanuel Lutheran Church of Maui shall employ the following water conservation measures in project designs and/or construction: use climate adapted, drought tolerant, and non-invasive plantings; limit irrigated turf to 25 percent or less of total landscaped area except for active play or picnic areas; and use brackish and/or reclaimed water sources for dust control during construction and other non-potable uses, as well as for landscaping when such water is available.
3. That, in order to facilitate wastewater collection and treatment services for the site, and all to the satisfaction of the Department of Environmental Management, Emmanuel Lutheran Church of Maui shall: fund any necessary off-site improvements to the collection system and wastewater pump stations; indicate on plans the ownership of each easement (in favor of which party); prevent non-contact cooling water and condensate from

draining to the wastewater system; and show the installation of a service manhole near the property line prior to connection to the County sewer. Furthermore, kitchen facilities within the proposed project shall comply with pre-treatment requirements (including grease interceptors, sample boxes, screens, etc).

4. That, in order to mitigate construction waste, and to the satisfaction of the Department of Environmental Management, Emmanuel Lutheran Church of Maui shall submit and implement a plan for composting/disposal of cleared and grubbed material and recycling/reuse/disposal of construction waste.
5. That, in order to increase the safety of internal circulation, and to the satisfaction of the Department, Emmanuel Lutheran Church of Maui shall submit and implement a plan for internal circulation which keeps vehicular traffic from mixing with the students, such as by keeping vehicles along the outer periphery of the central campus area shown on the project's conceptual site development plans.
6. That, in order to provide improved access to the project site and its neighborhood, and to the satisfaction of the DPW, provide road widening lot/lots for future right-of-way. Such lot/lots shall be dedicated to the County.
7. That, in order to mitigate local traffic impacts and provide adequate circulation to and in the vicinity of the project site, and to the satisfaction of the DPW, the assumptions and methods for the preparation of the updated traffic impact assessment report (TIAR) to be prepared pursuant to condition no. 5 of the March 7, 2008 Decision and Order of the Hawaii Land Use Commission on Docket A07-773 shall first be approved by the DPW. The revised TIAR shall include the intersection of Waiale and Waiinu Roads, possibly leading to a fair-share assessment for the signalization of this intersection. Further, that as it relates to conditions of circulation beyond those on state highways, the DPW shall approve the revised TIAR, and Emmanuel Lutheran Church of Maui shall contribute to or construct all of its recommended circulation improvements prior to the issuance of

building permits for new buildings to be added following the preparation of the revised TIAR.

8. That, in order to mitigate regional traffic impacts, and to the satisfaction of the DPW, Emmanuel Lutheran Church of Maui shall participate in a future impact fee for traffic and roadway improvements in the Wailuku-Kahului Community Plan Area. Said Fee shall be established and implemented in accordance with Title 14, Article 4, Impact Fees, except that the fees shall be paid to the County upon issuance of the first building permit or the establishment of the fee, whichever occurs later. If all phases of the project are completed before the traffic impact fee is established, then the fees shall be waived.
9. That, in order to provide for safety in the vicinity of the drainageway within the northerly portion of the site, the top of the drainageway shall be fenced, and access for maintenance shall be provided.
10. That, given that development on the property is proposed to be carried out in phases, a compliance report shall be submitted and approved by the Department concurrently with the Revised TIAR in Condition No. 7. Approval of the Compliance Report will be required prior to the issuance of grading or building permits for development subsequent to the submittal of the Report, and a second compliance report shall be submitted and approved by the Department prior to the issuance of occupancy permits for the final phase of building development for the church and school.
11. That, as offered by Emmanuel Lutheran Church of Maui, Emmanuel Lutheran Church of Maui shall work with, and to the satisfaction of, the State Department of Transportation and DPW as appropriate, to enhance, or where currently adequate, retain pedestrian and bicycle facilities along Honoapiilani Highway and Waiale Road adjoining the property as contemplated in the "Bike Plan Hawaii" or similar plans of the State Department of Transportation.

... OF THE DOCUMENT
... FOLLOWS
STATE OF HAWAII

... OF CONVEYANCES

Doc 2009-138944
SEP 10, 2009 08:02 AM

Doc 2009-138944
SEP 10, 2009 08:02 AM

REGULAR SYSTEM

LAND COURT SYSTEM

Return By Mail () Pickup (x) : To:
Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Total Number of Pages: 9

Affects Tax Map Key (Maui) (2) 3-5-002:011

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL
ZONING

THIS INDENTURE, made this 21st day of August 2009, by Emmanuel Lutheran Church of Maui, a Hawaii nonprofit corporation, whose principal place of business is located in Kahului, Maui, Hawaii, and whose mailing address is 520 West One Street, Kahului, Hawaii, 96732, hereinafter referred to as "DECLARANT", and which is the owner of that certain parcel located at Waikapu, Maui, Hawai'i, comprised of approximately 25.263 acres, and identified for real property tax purposes by Tax Map Key No(s). (2) 3-5-002:011, hereinafter referred to as "PARCEL" (or "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 Parcel, comprised of approximately 25.263 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-423, which is on file in the Office of the County Clerk of the County of Maui; and

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. 09-102, 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 Parcel, 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 Parcel, 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 Parcel 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 Parcel 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;

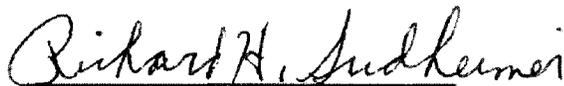
6. That the Declarant agrees to develop said Parcel in conformance with the conditions set forth in Exhibit "2", which is attached hereto and made a part hereof and which shall be made a part of the zoning ordinance;

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;

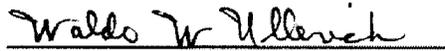
AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors and any other persons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

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

DECLARANT:
Emmanuel Lutheran Church of Maui

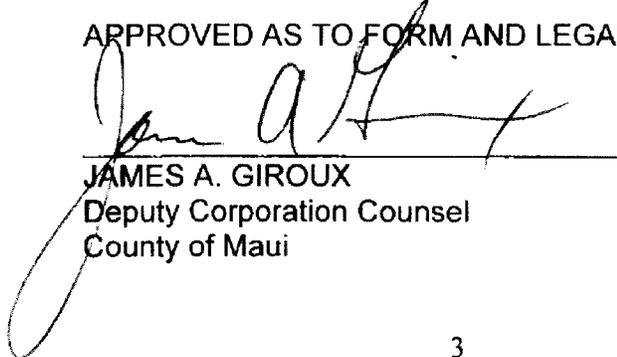


by: Richard H. Sudheimer
President



by: Waldo W. Ullerich
Treasurer

APPROVED AS TO FORM AND LEGALITY:



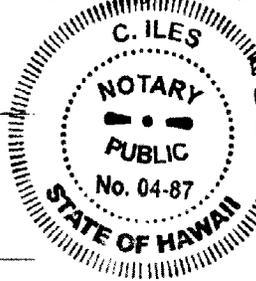
JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
)
 ISLAND AND COUNTY OF MAUI)

SS:

On this 21 day of August, 2009, before me personally appeared Richard H. Sudheimer, to me personally known who being by me duly sworn, did say that he is the President of Emmanuel Lutheran Church of Maui, a Hawaii non-profit corporation, and that the instrument was signed on behalf of Emmanuel Lutheran Church of Maui, a Hawaii non-profit corporation, by authority of its board of directors, partners or trustees, and Richard H. Sudheimer acknowledged the instrument to be the free act and deed of Emmanuel Lutheran Church of Maui, a Hawaii non-profit corporation.

C. Iles
Signature of Notary
C. Iles
My Commission Expires 02/29/2012



Doc. Date: 8-21-09 # Pages: 9
C. Iles
Doc. Description: Unilateral Agreement and Declaration for Conditional Zoning
Second Circuit
C. Iles 8-21-09
Notary Signature Date
NOTARY CERTIFICATION

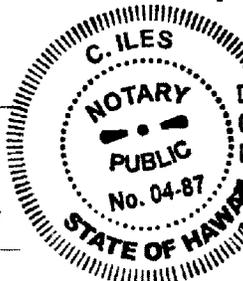
Printed Name of Notary
Notary Public, State of Hawaii C. Iles
My Commission Expires: My Commission Expires 02/29/2012

STATE OF HAWAII)
)
 ISLAND AND COUNTY OF MAUI)

SS:

On this 21 day of August, 2009, before me personally appeared Waldo W. Ullerich, to me personally known who being by me duly sworn, did say that he is the Treasurer of Emmanuel Lutheran Church of Maui, a Hawaii non-profit corporation, and that the instrument was signed on behalf of Emmanuel Lutheran Church of Maui, a Hawaii non-profit corporation, by authority of its board of directors, partners or trustees, and Waldo W. Ullerich acknowledged the instrument to be the free act and deed of Emmanuel Lutheran Church of Maui, a Hawaii non-profit corporation.

C. Iles
Signature of Notary
C. Iles
My Commission Expires 02/29/2012



Doc. Date: 8-21-09 # Pages: 9
C. Iles
Doc. Description: Unilateral Agreement and Declaration for Conditional Zoning
Second Circuit
C. Iles 8-21-09
Notary Signature Date
NOTARY CERTIFICATION

Printed Name of Notary
Notary Public, State of Hawaii C. Iles
My Commission Expires: My Commission Expires 02/29/2012

EXHIBIT # 1

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Grant 3152 to Henry Cornwell and Grant 3343 to Claus Spreckels) situate, lying and being on the easterly side of Honoapiilani Highway (F.A.P. No. 13-G) at Waikapu and Wailuku, Island and County of Maui, State of Hawaii, being LOT A of the "WAIKAPU EAST (LARGE-LOT) SUBDIVISION NO. 3" and thus bounded and described:

Beginning at a point at the southwesterly corner of this lot, being also the northwesterly corner of Lot B of Waikapu East (Large-Lot) Subdivision No. 3, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 5,563.76 feet south and 2,085.73 feet west and running by azimuths measured clockwise from true South:

1. 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: 271° 55' 48" and the point of tangency azimuth from the radial point being: 262° 39' 11", having a radius of 2,899.93 feet, the chord azimuth and distance being: 177° 17' 29.5" 469.02 feet to a point;
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EXHIBIT "2"

CONDITIONS OF ZONING

1. That, in order to prevent impacts to water resources, and all to the satisfaction of either the Department of Water Supply (DWS), the Department of Public Works (DPW), or the Department of Planning (Department), Emmanuel Lutheran Church of Maui shall employ construction mitigations as follows: adopt best management practices designed to minimize infiltration and runoff from construction and vehicle operations; prevent cement products, oil, fuel, and other toxic substances from falling or leaching into the water; properly and promptly dispose of all loosened and excavated soil and debris material from drainage structure work; retain ground cover until the last possible date; stabilize denuded areas by sodding or planting as soon as possible, which should involve replanting to include soil amendments, fertilizers, and temporary irrigation, and use of high seeding rates to ensure rapid stand establishment; avoid fertilizers and biocides, or apply only during periods of low rainfall to minimize chemical run-off; and keep run-off on-site.
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6. That, in order to provide improved access to the project site and its neighborhood, and to the satisfaction of the DPW, provide road widening lot/lots for future right-of-way. Such lot/lots shall be dedicated to the County.
7. That, in order to mitigate local traffic impacts and provide adequate circulation to and in the vicinity of the project site, and to the satisfaction of the DPW, the assumptions and methods for the preparation of the updated traffic impact assessment report (TIAR) to be prepared pursuant to condition no. 5 of the March 7, 2008 Decision and Order of the Hawaii Land Use Commission on Docket A07-773 shall first be approved by the DPW. The revised TIAR shall include the intersection of Waiale and Waiinu Roads, possibly leading to a fair-share assessment for the signalization of this intersection. Further, that as it relates to conditions of circulation beyond those on state highways, the DPW shall approve the revised TIAR, and Emmanuel Lutheran Church of Maui shall contribute to or construct all of its recommended circulation improvements prior to the issuance of building permits for new buildings to be added following the preparation of the revised TIAR.
8. That, in order to mitigate regional traffic impacts, and to the satisfaction of the DPW, Emmanuel Lutheran Church of Maui shall participate in a future impact fee for traffic and roadway improvements in the Wailuku-Kahului Community Plan Area. Said Fee shall be established and implemented in accordance with Title 14, Article 4, Impact Fees, except that the fees shall be paid to the County upon issuance of the first building permit or the establishment of the fee, whichever occurs later. If all phases of the project are completed before the traffic impact fee is established, then the fees shall be waived.

9. That, in order to provide for safety in the vicinity of the drainageway within the northerly portion of the site, the top of the drainageway shall be fenced, and access for maintenance shall be provided.
10. That, given that development on the property is proposed to be carried out in phases, a compliance report shall be submitted and approved by the Department concurrently with the Revised TIAR in Condition No. 7. Approval of the Compliance Report will be required prior to the issuance of grading or building permits for development subsequent to the submittal of the Report, and a second compliance report shall be submitted and approved by the Department prior to the issuance of occupancy permits for the final phase of building development for the church and school.
11. That, as offered by Emmanuel Lutheran Church of Maui, Emmanuel Lutheran Church of Maui shall work with, and to the satisfaction of, the State Department of Transportation and DPW as appropriate, to enhance, or where currently adequate, retain pedestrian and bicycle facilities along Honoapiilani Highway and Waiale Road adjoining the property as contemplated in the "Bike Plan Hawaii" or similar plans of the State Department of Transportation.

WE HEREBY CERTIFY that the foregoing BILL NO. 74 (2009)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 18th day of September, 2009, by the following vote:

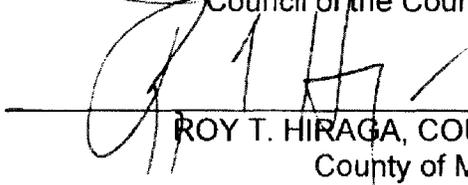
Dennis A. MATEO Chair	Michael J. MOLINA Vice-Chair	Gladys C. BAISA	Jo Anne JOHNSON	Solomon P. KAHO'OHALAHALA	William J. MEDEIROS	Wayne K. NISHIKI	Joseph PONTANILLA	Michael P. VICTORINO
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 18th day of September, 2009.

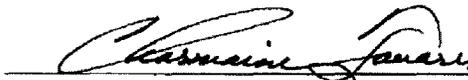
DATED AT WAILUKU, MAUI, HAWAII, this 18th day of September, 2009.

RECEIVED
2009 SEP 18 PM 3:35
OFFICE OF THE MAYOR

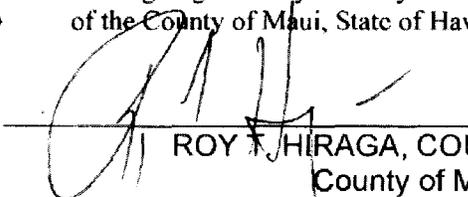

DENNIS A. MATEO, CHAIR
Council of the County of Maui


ROY T. HIRAGA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 21st DAY OF ~~SEPTEMBER~~, 2009.


CHARMAINE TAVARES, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3686 of the County of Maui, State of Hawaii.


ROY T. HIRAGA, COUNTY CLERK
County of Maui

Passed First Reading on September 4, 2009.
Effective date of Ordinance September 21, 2009.

RECEIVED
2009 SEP 21 AM 11:00
OFFICE OF THE CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3686, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui