

REQUEST FOR LEGAL SERVICES

Date: October 26, 2017
From: Robert Carroll, Chair
Land Use Committee


TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Jeffrey Ueoka, Esq.

Subject: DISTRICT BOUNDARY AMENDMENT FOR 4356 HANA HIGHWAY, HANA (LU-46)

Background Data: Review and approve attached revised proposed bill and attached Unilateral Agreements (three originals).

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Robert Carroll	Contact Person <u>Carla Nakata</u> (Telephone Extension: <u>7659</u>)
--	--

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): 10/26/17 4:30 PM
REASON: To submit for posting on 10/27/17 for the 11/3/17 Council Meeting

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
--------------	----------------	-----

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)

lu:ltr:046acc03:ajw/cmn

Attachments

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 4356 HANA HIGHWAY, HANA, MAUI, HAWAII, TAX MAP KEY NO. (2) 1-3-004:001 (POR.), CONTAINING A TOTAL OF 7.226 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 4356 Hana Highway, Hana, Maui, Hawaii, identified for real property tax purposes by Tax Map Key No. (2) 1-3-004:001 (por.), containing a total of 7.226 acres, and more particularly described in Exhibit "A" attached hereto and made a part hereof, and in District Boundary Amendment Map No. DB-304, attached hereto as Exhibit "B" and made a part hereof, which is on file in the Office of the County Clerk of the County of Maui.

SECTION 2. Pursuant to Section 19.68.040, Maui County Code, and Section 205-3.5, Hawaii Revised Statutes, the State Land Use District classification granted by this ordinance is subject to the conditions set forth in Exhibit "C," attached hereto and made a part hereof, and the Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment, attached hereto and made a part hereof as Exhibit "D."

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

APPROVED AS TO FORM
AND LEGALITY:

JEFF UEOKA

Deputy Corporation Counsel

County of Maui

S:\ALL\JTU\HOUSING\201H\Hana\DBA\Ordinance.docx
2017-0623

EXHIBIT "A"

LAND DESCRIPTION

Tax Map Key (2) 1-3-004:006(Portion)
(Fist Parcel)

Land situated at Kawaipapa, Hana Island and County of Maui, State of Hawaii.

Being a portion of Grant 2579 to Paele and Kuihanui.

Beginning at the northeast corner of this parcel of land, along the west side of Hana Highway the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 5,408.15 feet North and 5,425.22 feet West and running by azimuths measured clockwise from true South:

1. 327° 30' 247.86 feet along the west side of Hana Highway to a point; thence,
2. 327° 30' 253.84 feet along Government Land designated as Tax Map Key : (2) 1-3-004::022 to a point; thence,
3. 339° 45' 195.36 feet along the same to a point; thence,
4. 315° 00' 136.49. feet along the same to a point; thence,
5. 51° 00' 164.81 feet along Grant 4534 to Ulunaele to a point, thence,
6. 332° 48' 53" 118.98 feet along the same to a point; thence,
7. 88° 18' 53" 161.12 feet along portion of Grant 2579 to Paele and Kuihanui being portion of Tax Map KeY : (2) 1-3-004:001 a point; thence,
8. 146° 00' 981.65 feet along the same to a point; thence,
9. 253° 32' 30" 364.96 feet along Government Land to the point of beginning and containing an area of 6.986 acres, more or less.

Note: This metes and bounds description has been prepared for Land Use District Boundary Amendment purposes only.

This work was prepared by me
or under my direct supervision.
DMC, ENGINEERING

 7/6/17



Bernardo L. Rarogal
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 10009
License Expire: 4/18
End of description.

LAND DESCRIPTION

Tax Map Key (2) 1-3-004:006(Portion)
(Second Parcel)

Land situated at Kawaipapa, Hana Island and County of Maui, State of Hawaii.

Being a portion of Grant 2579 to Paele and Kuihanui.

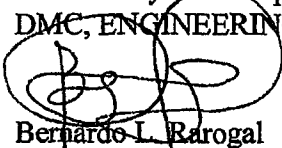
Beginning at the northeast corner of this parcel of land, along the west side of Hana Highway, (Federal Aid Project F58(1)) the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 4,593.72 feet North and 4,873.89 feet West and running by azimuths measured clockwise from true South:

Along the west side of Hana Highway (Federal Aid Project F58(1)) on a curve to the right a radius of 2,242.52 feet and a central angle of 3° 15' 15" the chord azimuth and distance being:

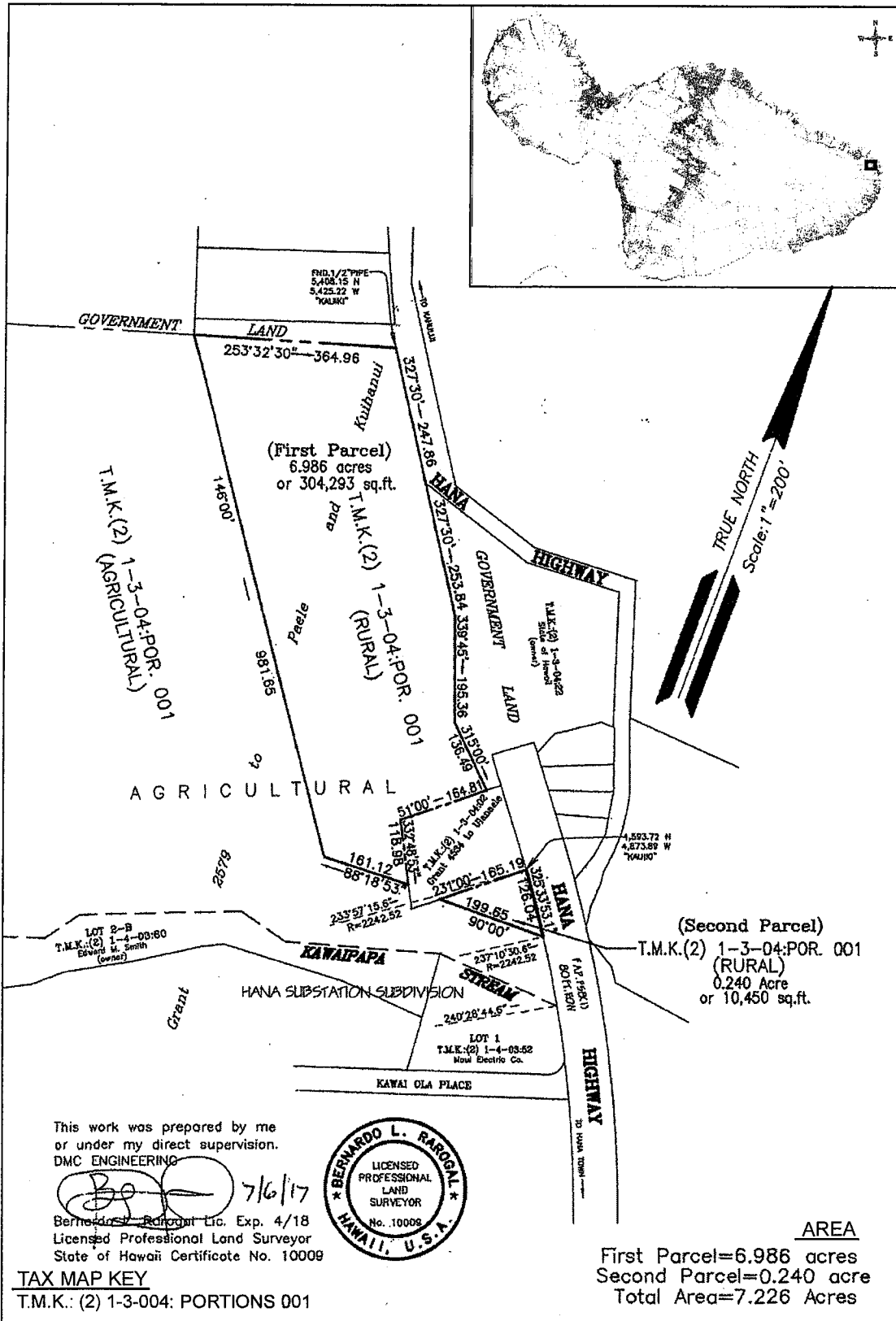
1. 325° 33' 53.1" 126.04 feet to a point; thence,
2. 90° 00' 199.65 feet along portion of Grant 2579 to Paele and Kuihanui being portion of Tax Map Key :(2) 1-3-004:001 to a point; thence,
8. 231° 00' 165.19 feet along Grant 4534 to Ulunaele to the point of beginning and containing an area of 0.240 acre, more or less.

Note: This metes and bounds description has been prepared for Land Use District Boundary Amendment purposes only.

This work was prepared by me
or under my direct supervision
DMC, ENGINEERING


Bernardo L. Rarogal
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 10009
License Expire:4/18
End of description.





**LAND USE DISTRICT BOUNDARY
AMENDMENT MAP NO. DB-304
HANA, MAUI, HAWAII
FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT**

EXHIBIT "C"
CONDITIONS

1. This ordinance is conditional upon the Council's passage of a resolution approving, with modifications, the independent development of Hana Housing Development, 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 25 residential workforce housing lots on the Property with all related roads and infrastructure not later than the fifth anniversary of the effective date of the 201H Resolution.
4. The Property shall be developed as a residential workforce housing project in accordance with the 201H Resolution.
5. The Property shall be developed in strict compliance with the representations made to the Council in obtaining approval of the State District Boundary Amendment.
6. There shall be a prohibition on any action that would interfere with or restrain farming operations; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the Agricultural District.
7. There shall be notification to all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the Agricultural District are protected under Chapter 165, the Hawaii Right to Farm Act, and the notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

GTH Land Company, Inc.
651 Papipi Road
Kula, Hawaii, 96790
UNITED STATES

Thomas A. Hoeffken and
Nancy M. Hoeffken
651 Papipi Road
Kula, Hawaii, 96790
UNITED STATES

LAND COURT SYSTEM

REGULAR SYSTEM

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

Total Number of Pages: 13

Affects Tax Map Key (Maui) (2) 1-3-004:001 Portion

UNILATERAL AGREEMENT AND DECLARATION
FOR STATE LAND USE DISTRICT BOUNDARY AMENDMENT

THIS INDENTURE, made this ____ day of _____ (hereinafter referred to as the "Declaration" or "Unilateral Agreement"), by GTH Land Company, Inc., a Hawaii Corporation, whose mailing address is 651 Papipi Road, Kula, Hawaii, 96790, UNITED STATES, who is the developer of that certain portion of a parcel located at Hana, Maui, Hawai'i, comprised of approximately 7.226 acres, and identified for real property tax purposes as a portion of Tax Map Key No.(2) 1-3-004:001, hereinafter referred to as "PROPERTY"; and Thomas A. Hoeffken, and Nancy M. Hoeffken, whose mailing address is 651 Papipi Road, Kula, Hawaii, 96790, UNITED STATES, who are the owners of the property;

Hereinafter GTH Land Company, Inc., Thomas A. Hoeffken, and Nancy M. Hoeffken are referred to collectively as the "Declarants".

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i, hereinafter referred to as "Council", is considering the Declarants' request for a State Land Use District Boundary Amendment for the Property, comprised of approximately 7.226 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 Use District Boundary Amendment Map No. DB-304, which is attached hereto as Exhibit "2" and made a part hereof and 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._____, that said State Land Use District Boundary Amendment for the Property be approved for passage on first reading subject to certain conditions, pursuant to Section 19.68.040, Maui County Code; and

WHEREAS, the Declarants have 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 Declarants make 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 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 Declarants, 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 Declarants notify the appropriate County Department that any of said covenants, conditions and restrictions are satisfied by the Declarants, and the appropriate County Department verifies the satisfaction and provides a written release of the covenant, condition or restriction;

4. That the term "Declarants" 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 "Declarants", the Declarants' 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 Classification and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawai'i;

6. That the Declarants agree 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 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, provided that the Declarants or their 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 State Land Use District Boundary Amendments.

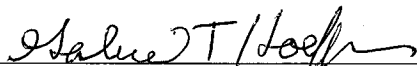
This Declaration may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Declaration.

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.

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

DECLARANTS:

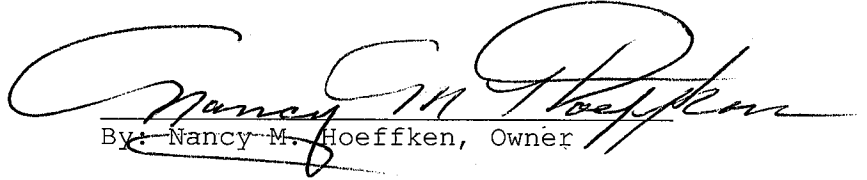
GTH Land Company, Inc.
651 Papipi Road
Kula, Hawaii, 96790
UNITED STATES


By: Gabriel T. Hoeffken
Its: Vice President

Thomas A. Hoeffken
651 Papipi Road
Kula, Hawaii, 96790
UNITED STATES


By: Thomas A. Hoeffken, Owner

Nancy M. Hoeffken
651 Papipi Road
Kula, Hawaii, 96790
UNITED STATES



By: Nancy M. Hoeffken, Owner

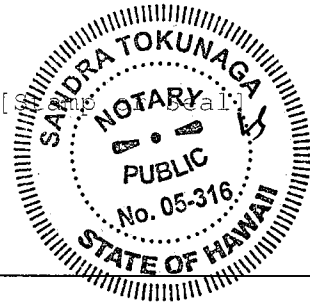
APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
County of Maui

STATE OF Hawaii)
) SS.
County of Maui)

On this 26 day of October, 2017, before me personally appeared Gabriel J. Hoeyfren, 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.



[Handwritten Signature]

Notary Public, State of Hawaii

Print Name: Candra Tokunaga

My Commission Expires: 11/10/2017

NOTARY PUBLIC CERTIFICATION

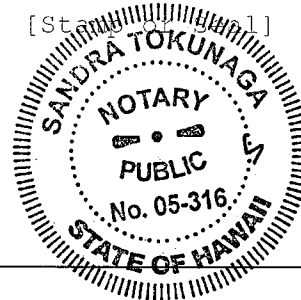
Doc. Date: No date # Pages: 13

Notary Name: Candra Tokunaga Judicial Circuit: 2nd

Document Description: unilateral agreement
and Declaration

Notary Signature: *[Handwritten Signature]*

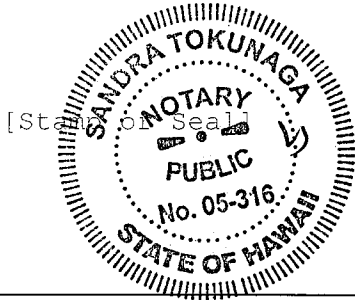
Date: 10.26.17



STATE OF Hawaii)
County of Maui) SS.

On this 26 day of October, 2017, before me personally appeared Thomas A. Higgins, 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.



A handwritten signature in black ink, appearing to be "Sandra Tokunaga".

Notary Public, State of Hawaii

Print Name: Sandra Tokunaga

My Commission Expires: 11/10/2017

NOTARY PUBLIC CERTIFICATION

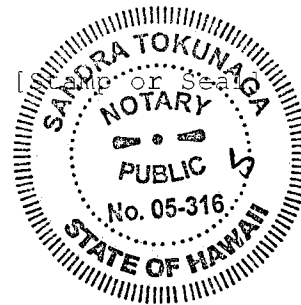
Doc. Date: No date # Pages: 13

Notary Name: Sandra Tokunaga Judicial Circuit: 2nd

Document Description: unilateral agreement
and declaration

Notary Signature: A handwritten signature in black ink, appearing to be "Sandra Tokunaga".

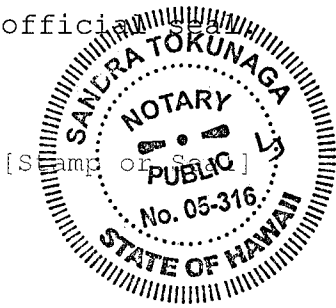
Date: 10.26.2017



STATE OF Hawaii)
) SS.
County of Maui)

On this 24 day of October, 2017, before me personally appeared Nancy M. Hoffsten, 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.



Notary Public, State of Hawaii

Print Name: Sandra Tokunaga

My Commission Expires: 11/10/2017

NOTARY PUBLIC CERTIFICATION

Doc. Date: No date # Pages: 13

Notary Name: Sandra Tokunaga Judicial Circuit: 2nd

Document Description: unilateral agreement and declaration

Notary Signature: 

Date: 10/26/17

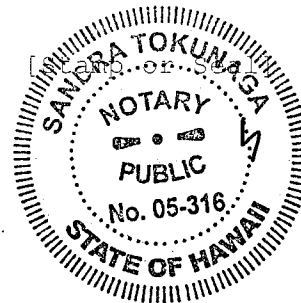


EXHIBIT "1"

LAND DESCRIPTION

Tax Map Key (2) 1-3-004:006(Portion)
(Fist Parcel)

Land situated at Kawaipapa, Hana Island and County of Maui, State of Hawaii.

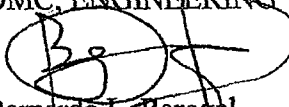
Being a portion of Grant 2579 to Paele and Kuihanui.

Beginning at the northeast corner of this parcel of land, along the west side of Hana Highway the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 5,408.15 feet North and 5,425.22 feet West and running by azimuths measured clockwise from true South:

1. 327° 30' 247.86 feet along the west side of Hana Highway to a point; thence,
2. 327° 30' 253.84 feet along Government Land designated as Tax Map Key : (2) 1-3-004::022 to a point; thence,
3. 339° 45' 195.36 feet along the same to a point; thence,
4. 315° 00' 136.49. feet along the same to a point; thence,
5. 51° 00' 164.81 feet along Grant 4534 to Ulunaele to a point, thence,
6. 332° 48' 53" 118.98 feet along the same to a point; thence,
7. 88° 18' 53" 161.12 feet along portion of Grant 2579 to Paele and Kuihanui being portion of Tax Map KeY : (2) 1-3-004:001 a point; thence,
8. 146° 00' 981.65 feet along the same to a point; thence,
9. 253° 32' 30" 364.96 feet along Government Land to the point of beginning and containing an area of 6.986 acres, more or less.

Note: This metes and bounds description has been prepared for Land Use District Boundary Amendment purposes only.

This work was prepared by me
or under my direct supervision.
DMC, ENGINEERING

 7/6/17

Bernardo L. Rarogal
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 10009
License Expire: 4/18
End of description.



LAND DESCRIPTION

Tax Map Key (2) 1-3-004:006(Portion)
(Second Parcel)

Land situated at Kawaipapa, Hana Island and County of Maui, State of Hawaii.

Being a portion of Grant 2579 to Paele and Kuihanui.

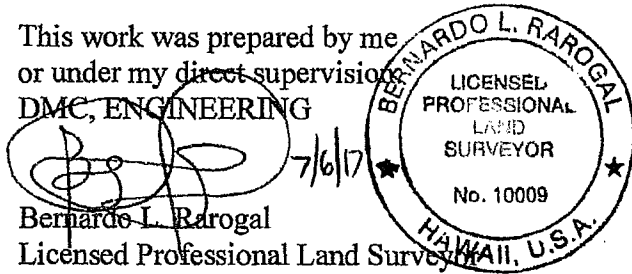
Beginning at the northeast corner of this parcel of land, along the west side of Hana Highway, (Federal Aid Project F58(1)) the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 4,593.72 feet North and 4,873.89 feet West and running by azimuths measured clockwise from true South:

Along the west side of Hana Highway (Federal Aid Project F58(1)) on a curve to the right a radius of 2,242.52 feet and a central angle of 3° 15' 15" the chord azimuth and distance being:

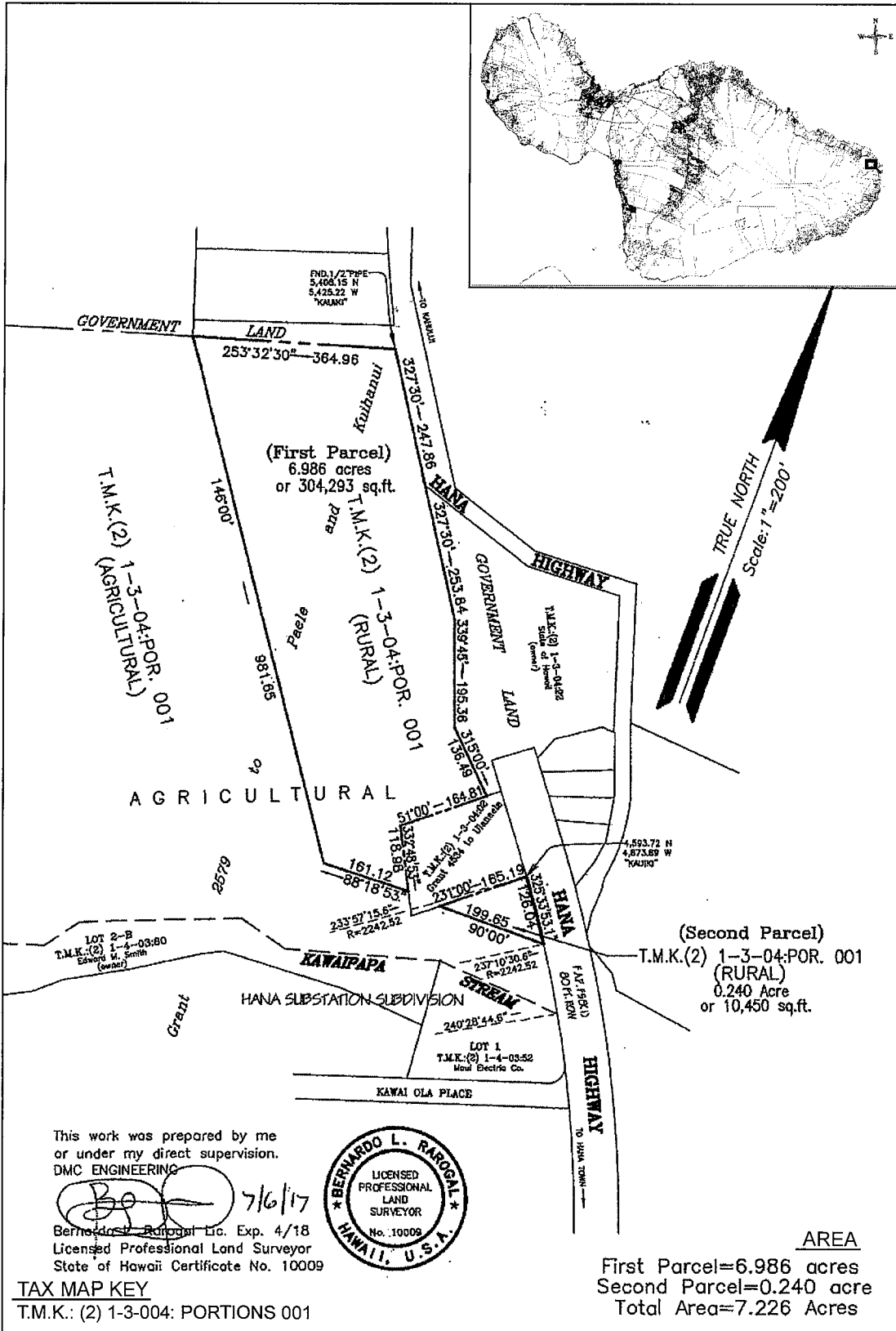
- 1. 325° 33' 53.1" 126.04 feet to a point; thence,
- 2. 90° 00' 199.65 feet along portion of Grant 2579 to Paele and Kuihanui being portion of Tax Map Key :(2) 1-3-004:001 to a point; thence,
- 8. 231° 00' 165.19 feet along Grant 4534 to Ulunalee to the point of beginning and containing an area of 0.240 acre, more or less.

Note: This metes and bounds description has been prepared for Land Use District Boundary Amendment purposes only.

This work was prepared by me or under my direct supervision
DMC, ENGINEERING



Bernardo L. Rarogal
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 10009
License Expire:4/18
End of description.



**LAND USE DISTRICT BOUNDARY
 AMENDMENT MAP NO. DB-304**
 HANA, MAUI, HAWAII
 FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT

EXHIBIT "3"
CONDITIONS

1. This ordinance is conditional upon the Council's passage of a resolution approving, with modifications, the independent development of Hana Housing Development, 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 25 residential workforce housing lots on the Property with all related roads and infrastructure not later than the fifth anniversary of the effective date of the 201H Resolution.
4. The Property shall be developed as a residential workforce housing project in accordance with the 201H Resolution.
5. The Property shall be developed in strict compliance with the representations made to the Council in obtaining approval of the State District Boundary Amendment.
6. There shall be a prohibition on any action that would interfere with or restrain farming operations; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the Agricultural District.
7. There shall be notification to all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the Agricultural District are protected under Chapter 165, the Hawaii Right to Farm Act, and the notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.