

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 15, 2018

Committee
Report No. 18-199

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on October 17, 2018, October 31, 2018, and reconvened on November 2, 2018, makes reference to County Communication 18-303, from Councilmember Robert Carroll, relating to the District Boundary Amendment for the proposed Wailuku Apartment Rental Housing Project on 14.416 acres of land identified for real property tax purposes as tax map key (2) 3-5-001:064, Wailuku, Maui, Hawaii ("property").

By correspondence dated October 4, 2018, the Director of Housing and Human Concerns transmitted a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII, TAX MAP KEY NO. (2) 3-5-1:64, CONTAINING A TOTAL OF 14.416 ACRES."

The purpose of the proposed bill is to grant a request from Legacy Wailuku LLC ("Developer") for a State Land Use District Boundary Amendment from Agricultural District to Urban District for the property to facilitate the development of a Chapter 201H, Hawaii Revised Statutes ("HRS") project referred to as the Wailuku Apartment Rental Housing Project.

Your Committee notes the proposed project was separately submitted to the Council pursuant to Section 201H-38, HRS, by correspondence dated September 14, 2018 (received on October 4, 2018), from Craig Hirai, Executive Director, Hawaii Housing Finance and Development Corporation, State Department of Business Economic Development & Tourism ("HHFDC"). Your Committee also considered the proposed HRS Chapter 201H project at your Committee's meetings of

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October 17, 2018, October 31, 2018, and reconvened on November 2, 2018.

The proposed project would provide 195 affordable rental units and 129 market-rate rental units on the property. The development will include nine residential structures, a recreation and leasing center, four outdoor play areas, a pool, and a community center. The 195 affordable rental units would be available for rent to qualified individuals earning from 50 to 140 percent of the area median income, based on HHFDC rent guidelines.

Your Committee notes that, pursuant to Section 201H-38, HRS, the Developer sought various exemptions for the proposed project from certain requirements of the Maui County Code ("MCC") and Revised Charter of the County of Maui (1983), as amended ("Charter"), relating to planning, zoning, construction standards for subdivisions, the development and improvement of land, and the construction of dwelling units. As it relates to the proposed District Boundary Amendment, the Developer proposed exemptions from Chapter 19.68, MCC, relating to State Land Use District Boundary applications and procedures, and Article 8, Chapter 8, of the Charter relating to certain procedural requirements. Your Committee separately recommended approval of these exemptions.

The proposed District Boundary Amendment bill incorporated seven conditions as submitted. The first condition makes the ordinance conditional upon the Council's passage of a resolution approving the Chapter 201H project ("201H resolution"). The second condition terminates the District Boundary Amendment ordinance concurrently with an expiration of the 201H resolution caused by the Developer's failure to start physical construction on the property by the deadline established in the resolution.

The third condition requires the Developer to act in good faith and with its reasonable best efforts to complete the 195 rental residential workforce housing units on the property with all related infrastructure not later than the fifth anniversary of the effective date of the 201H resolution. The fourth condition requires the property to be developed as a residential

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workforce housing project in accordance with the 201H resolution (which allows 40 percent of the units to be rented at market rate).

The fifth condition requires that all 324 units be for rental only, and not for sale to individual home buyers as condominium units. The sixth condition prohibits all 324 units from being leased for occupancy of any period shorter than 180 days. The seventh condition requires the property to be developed in strict compliance with the representations made to the Council in obtaining the District Boundary Amendment.

Your Committee expressed concerns with the language in the third condition requiring the Developer to “act in good faith and with its reasonable best efforts” to complete the 195 residential workforce housing units within five years. Your Committee removed the phrase, preferring instead to require the units be completed within five years of the effective date of the 201H resolution, and to allow the Developer to apply for an extension of time, to be approved by the Council, at least 12 months prior to the expiration of the five-year period.

Your Committee also revised the fourth condition by deleting the word “workforce” and identifying the project by name.

Your Committee voted 7-1 to recommend passage of the revised proposed bill on first reading, recordation of the unilateral agreement, and filing of the communication. Committee Chair Carroll, Vice-Chair Hokama, and members Crivello, Guzman, King, Sugimura, and White voted “aye.” Committee member Cochran voted “no.” Committee member Atay was excused.

Subsequent to your Committee’s meeting of November 2, 2018, the Department of the Corporation Counsel proposed the wording of the third condition be revised to more fully meet the intent of your Committee. As revised, the condition reads as follows:

3. Developer shall complete all of the 195 rental residential workforce housing units on the Property with all related infrastructure not later than the fifth (5th) anniversary

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of the effective date of the 201H Resolution. Developer may, subject to Council approval by resolution and for good cause, be granted one (1) time extension to this deadline, provided the request for time extension is received by the Council prior to the fourth (4th) anniversary of the effective date of the 201H Resolution. Failure to submit the request in a timely manner shall result in a forfeiture of the opportunity for extension.

Your Committee is in receipt of a revised District Boundary Amendment map correcting the map number to DB-413.

Your Committee is further in receipt of an agreement entitled "Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment," executed by the landowner and approved as to form and legality by the Department of the Corporation Counsel.

Your Committee is also in receipt of a revised proposed bill, entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR 14.416 ACRES SITUATED AT WAIKAPU, MAUI, HAWAII, TAX MAP KEY (2) 3-5-001:064," approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions, the corrected map number and map, and nonsubstantive revisions.

Your Land Use Committee RECOMMENDS the following:

1. That Bill 117 (2018), attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR 14.416 ACRES SITUATED AT WAIKAPU, MAUI, HAWAII, TAX MAP KEY (2) 3-5-001:064," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That the County Clerk RECORD the unilateral agreement; and

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3. That County Communication 18-303 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

lu:cr:18064aa:cmn

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR 14.416 ACRES SITUATED AT WAIKAPU, MAUI, HAWAII, TAX MAP KEY (2) 3-5-001:064

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 Urban District (Conditional Boundary Amendment) for that certain land situated at Waikapu, Maui, Hawaii, identified for real property tax purposes by tax map key (2) 3-5-001:064, containing a total of 14.416 acres, and more particularly described in Exhibit "A," attached hereto and made a part hereof, and in District Boundary Amendment Map DB-413, attached hereto as Exhibit "B" and made a part hereof.

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," 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:



Department of the Corporation Counsel
County of Maui

lu:misc:064abill01

EXHIBIT "A"

Waikapu East (Large-Lot) Subdivision No. 3 Description of Lot J

Land situated on the easterly side of Honoapiilani Highway
(F.A.P. No. 13-G) at Waikapu, Wailuku, Maui, Hawaii

Being a portion of R.P. 4529-B and 4549, L.C. Aw. 71 to Michael
J. Nowlein

Beginning at a point at the southwesterly corner of this lot,
the coordinates of said point of beginning referred to Government
Survey Triangulation Station "LUKE" being 4,236.79 feet South and
2,218.58 feet West and running by azimuths measured clockwise from
True South:

1. 172° 39' 11" 301.42 feet along the easterly side of
Honoapiilani Highway (F.A.P.
No. 13-G) to a point;
2. 262° 36' 6.43 feet along same to a point;
3. 172° 36' 570.94 feet along same to a point;
4. Thence along the southerly side of Kuikahi Drive Extension on a
curve to the right, having a
radius of 40.00 feet, the chord
azimuth and distance being:
217° 13' 56.19 feet to a
point;
5. 261° 50' 151.68 feet along same to a point;
6. Thence along same on a curve to the right, having a radius of
1,664.00 feet, the chord
azimuth and distance being:
270° 25' 496.70 feet to a
point;
7. 279° 00' 248.10 feet along same to a point;
8. Thence along same on a curve to the right, having a radius of
40.00 feet, the chord azimuth
and distance being:
324° 00' 56.57 feet to a
point;

9. 10° 43' 323.28 feet along the remainder of R.P. 4529-B and 4549, L.C. Aw. To Michael J. Nowlein, being also along Lot K of Waikapu East (Large-Lot) Subdivision No. 3 to a point;

10. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being: 280° 43' and the point of tangency azimuth from the radial point being: 284° 32' 45", having a radius of 1,600.00 feet, the chord azimuth and distance being: 12° 37' 52.5" 106.91 feet to a point;

11. 61° 16' 878.02 feet along Grant 3343 to Claus Spreckels, being also along Lot A of Waikapu East (Large-Lot) Subdivision No. 3 to the point of beginning and containing an Area of 14.416 Acres.

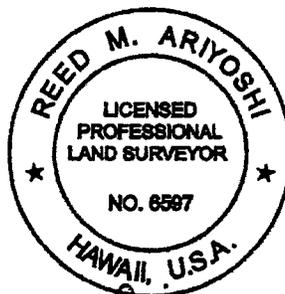
SUBJECT, HOWEVER, to the following:

1. A Restriction of Vehicle Access rights along Honoapiilani Highway (F.A.P. No. 13-G).

2. A portion of an existing Electrical Easement (25 feet wide) in favor of Maui Electric Company, Ltd.

3. A portion of an existing Drainage Easement "D-1" in favor of Hawaii Land and Farming, Inc.

4. A portion of an existing Sewerline Easement "S-1" in favor of the County of Maui.



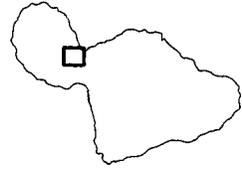
Reed M. Ariyoshi

1/2/18

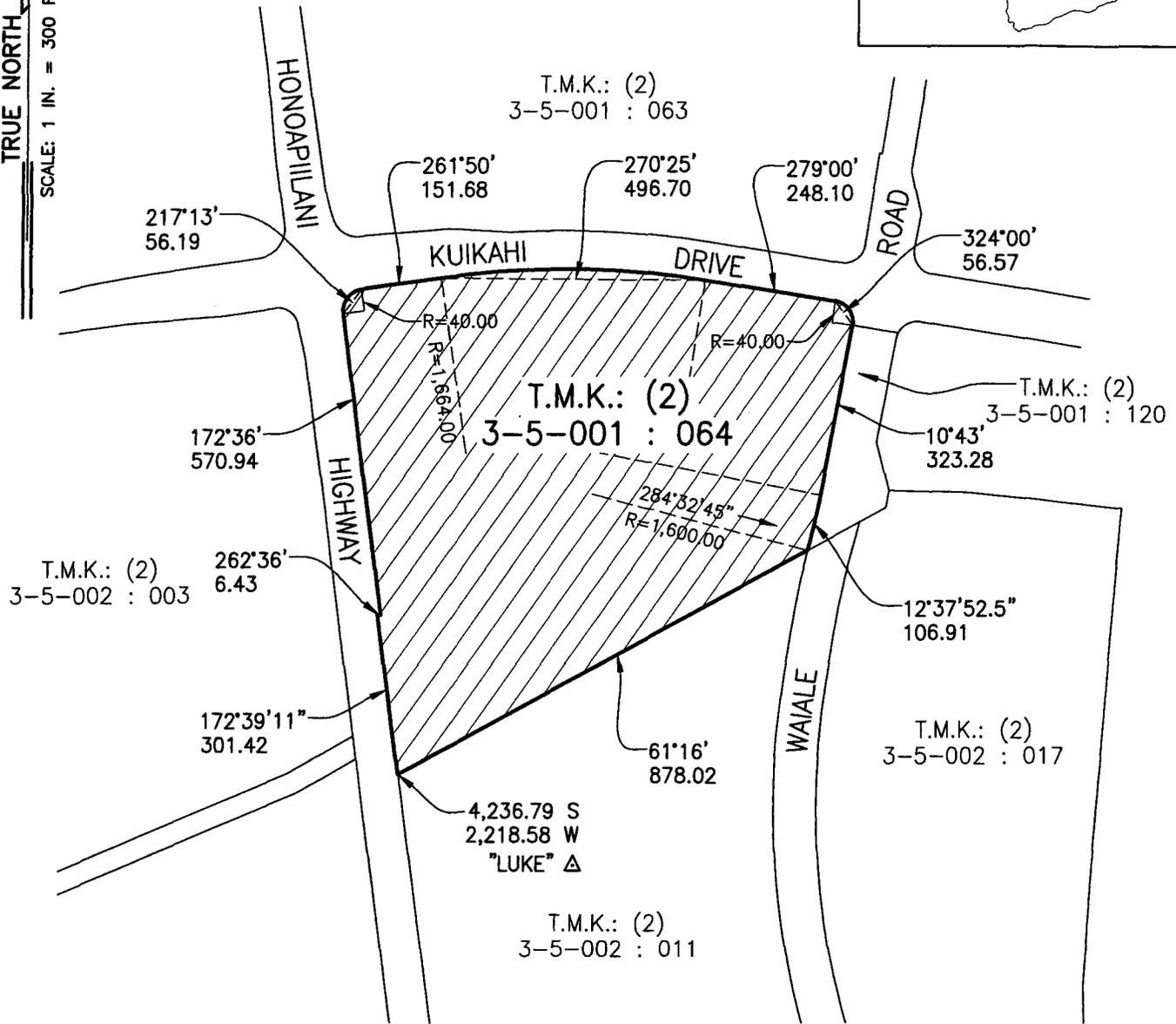
Licensed Professional Land Surveyor
Certificate No. 6597

EXHIBIT ' B ' "

VICINITY MAP



TRUE NORTH
SCALE: 1 IN. = 300 FT.



TAX MAP KEY

T.M.K.: (2) 3-5-001 : 064 (14.416 ACRES)

AREA:

14.416 ACRES

DISTRICT BOUNDARY AMENDMENT MAP NO. DB-413

DISTRICT BOUNDARY AMENDMENT
 WAIKAPU, WAILUKU, MAUI, HAWAII
 FROM AGRICULTURAL (A) TO URBAN (U)

EXHIBIT "C"

CONDITIONS

1. This ordinance is conditional upon the Council's adoption of a resolution approving with modifications the independent development of Wailuku Apartments 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 complete all of the 195 rental residential workforce housing units on the Property with all related infrastructure not later than the fifth (5th) anniversary of the effective date of the 201H Resolution. Developer may, subject to Council approval by resolution and for good cause, be granted one (1) time extension to this deadline, provided the request for time extension is received by the Council prior to the fourth (4th) anniversary of the effective date of the 201H Resolution. Failure to submit the request in a timely manner shall result in a forfeiture of the opportunity for extension.
4. The Property shall be developed as a residential housing project known as the Wailuku Apartment Rental Housing Project, in accordance with the 201H Resolution.
5. The 195 residential workforce housing units and the 129 market-rate units shall be for rental only, and not for sale to individual home buyers as condominium units for their own occupancy.
6. All residential workforce housing units and all market-rate units shall be subject to the restriction that no unit shall be leased for occupancy of any period shorter than one hundred eighty (180) days.
7. The Property shall be developed in strict compliance with the representations made to the Council in obtaining approval of the State District Boundary Amendment.

EXHIBIT "D"

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail () Pickup () To:

Office of the County Clerk
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

Tax Key: (2) 3-5-001:064

Total No. of Pages: _____

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

THIS INDENTURE, made this _____ day of _____, 2018, by KEHALANI AGRICULTURAL INVESTORS LLC, a Delaware limited liability company, whose principal place of business is located in Wailuku, Maui, Hawaii, and whose mailing address is 10100 Santa Monica Blvd., Ste. 1000, Los Angeles, California 90067, hereinafter referred to as "Declarant", and who is the owner of that certain land located at Waikapu, Maui, Hawaii, comprised of approximately 14.416 acres and identified for real property tax purposes by Tax Map Key No. (2) 3-5-001:064, 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 14.416 acres, which is more particularly described in Exhibit "1",

which is attached hereto and made a part hereof, and is more particularly identified in District Boundary Amendment Map No. DB-413 attached hereto as Exhibit "2" and made a part hereof; and

WHEREAS, Declarant proposes that the Property be developed as a residential workforce housing rental project under the name "Wailuku Rental Apartment Housing Project"; and

WHEREAS, the Council recommends through its Land Use Committee, 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; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the State land use district boundary classification 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 Urban State land use district boundary classification and 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, 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 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.

[Signatures on next page]

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

DECLARANT:

KEHALANI AGRICULTURAL INVESTORS LLC

By 

Aaron A. Giovara
Its Authorized Signatory

APPROVED AS TO FORM
AND LEGALITY:



JEFFREY DEOKA
Deputy Corporation Counsel
County of Maui

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of San Francisco

On November 5, 2018 before me, Whitney Ann Allen, Notary Public
(insert name and title of the officer)

personally appeared Aaron A. Livonara
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature [Handwritten Signature] (Seal)

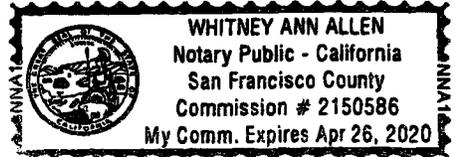


EXHIBIT "1"

Waikapu East (Large-Lot) Subdivision No. 3
Description of Lot J

Land situated on the easterly side of Honoapiilani Highway
(F.A.P. No. 13-G) at Waikapu, Wailuku, Maui, Hawaii

Being a portion of R.P. 4529-B and 4549, L.C. Aw. 71 to Michael
J. Nowlein

Beginning at a point at the southwesterly corner of this lot,
the coordinates of said point of beginning referred to Government
Survey Triangulation Station "LUKE" being 4,236.79 feet South and
2,218.58 feet West and running by azimuths measured clockwise from
True South:

1. 172° 39' 11" 301.42 feet along the easterly side of
Honoapiilani Highway (F.A.P.
No. 13-G) to a point;
2. 262° 36' 6.43 feet along same to a point;
3. 172° 36' 570.94 feet along same to a point;
4. Thence along the southerly side of Kuikahi Drive Extension on a
curve to the right, having a
radius of 40.00 feet, the chord
azimuth and distance being:
217° 13' 56.19 feet to a
point;
5. 261° 50' 151.68 feet along same to a point;
6. Thence along same on a curve to the right, having a radius of
1,664.00 feet, the chord
azimuth and distance being:
270° 25' 496.70 feet to a
point;
7. 279° 00' 248.10 feet along same to a point;
8. Thence along same on a curve to the right, having a radius of
40.00 feet, the chord azimuth
and distance being:
324° 00' 56.57 feet to a
point;

9. 10° 43' 323.28 feet along the remainder of R.P. 4529-B and 4549, L.C. Aw. To Michael J. Nowlein, being also along Lot K of Waikapu East (Large-Lot) Subdivision No. 3 to a point;
10. Thence along same on a curve to the right, with the point of curvature azimuth from the radial point being: 280° 43' and the point of tangency azimuth from the radial point being: 284° 32' 45", having a radius of 1,600.00 feet, the chord azimuth and distance being: 12° 37' 52.5" 106.91 feet to a point;
11. 61° 16' 878.02 feet along Grant 3343 to Claus Spreckels, being also along Lot A of Waikapu East (Large-Lot) Subdivision No. 3 to the point of beginning and containing an Area of 14.416 Acres.

SUBJECT, HOWEVER, to the following:

1. A Restriction of Vehicle Access rights along Honoapiilani Highway (F.A.P. No. 13-G).
2. A portion of an existing Electrical Easement (25 feet wide) in favor of Maui Electric Company, Ltd.
3. A portion of an existing Drainage Easement "D-1" in favor of Hawaii Land and Farming, Inc.

4. A portion of an existing Sewerline Easement "S-1" in favor of the County of Maui.



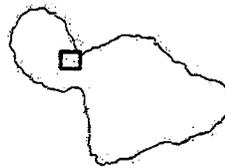
Reed M. Ariyoshi

7/2/18

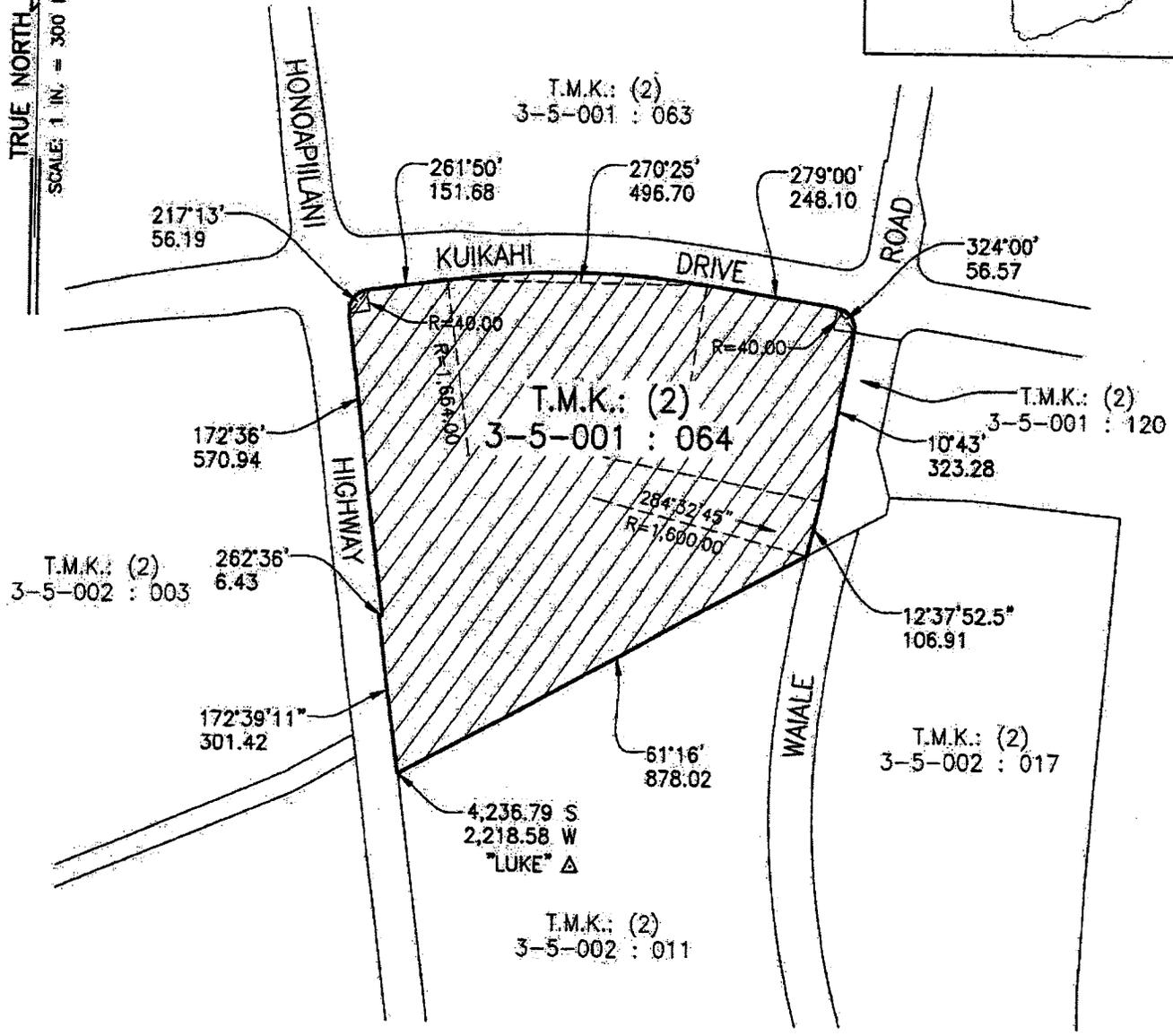
Licensed Professional Land Surveyor
Certificate No. 6597

EXHIBIT "2"

VICINITY MAP



TRUE NORTH
SCALE: 1 IN. = 300 FT.



TAX MAP KEY

T.M.K.: (2) 3-5-001 : 064 (14.416 ACRES)

AREA:

14.416 ACRES

DISTRICT BOUNDARY AMENDMENT MAP NO. DB-413

DISTRICT BOUNDARY AMENDMENT
 WAIKAPU, WAILUKU, MAUI, HAWAII
 FROM AGRICULTURAL (A) TO URBAN (U)

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EXHIBIT "3"

CONDITIONS

1. This ordinance is conditional upon the Council's adoption of a resolution approving with modifications the independent development of Wailuku Apartments 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 complete all of the 195 rental residential workforce housing units on the Property with all related infrastructure not later than the fifth (5th) anniversary of the effective date of the 201H Resolution. Developer may, subject to Council approval by resolution and for good cause, be granted one (1) time extension to this deadline, provided the request for time extension is received by the Council prior to the fourth (4th) anniversary of the effective date of the 201H Resolution. Failure to submit the request in a timely manner shall result in a forfeiture of the opportunity for extension.
4. The Property shall be developed as a residential housing project known as the Wailuku Apartment Rental Housing Project, in accordance with the 201H Resolution.
5. The 195 residential workforce housing units and the 129 market-rate units shall be for rental only, and not for sale to individual home buyers as condominium units for their own occupancy.
6. All residential workforce housing units and all market-rate units shall be subject to the restriction that no unit shall be leased for occupancy of any period shorter than one hundred eighty (180) days.
7. The Property shall be developed in strict compliance with the representations made to the Council in obtaining approval of the State District Boundary Amendment.