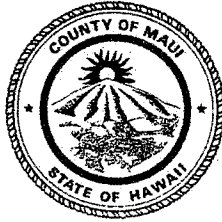


MICHAEL P. VICTORINO  
Mayor

LORI TSUHAKO  
Director

LINDA R. MUNSELL  
Deputy Director



RECEIVED  
2019 MAY 29 AM 10:04  
OFFICE OF THE MAYOR

DEPARTMENT OF HOUSING  
& HUMAN CONCERNS  
COUNTY OF MAUI  
2200 MAIN STREET, SUITE 546  
WAILUKU, MAUI, HAWAII 96793  
PHONE: (808) 270-7805

RECEIVED  
2019 MAY 30 AM 11:02  
OFFICE OF THE  
COUNTY CLERK

May 29, 2019

Honorable Michael P. Victorino  
Mayor, County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

For Transmittal to:

*Michael P. Victorino* 5/30/19  
Mayor Date

Honorable Kelly T. King, Chair  
and Members of the Maui County Council  
200 South High Street  
Wailuku, Hawaii 96793

Dear Chair King and Members:

**SUBJECT: A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR 14.453 ACRES SITUATED AT LAHAINA, MAUI, HAWAII, TAX MAP KEY NO. (2) 4-7-13: 01 (POR.) AND 02 (POR.)**

I am transmitting a proposed Bill for an Ordinance entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR 14.453 ACRES SITUATED AT LAHAINA, MAUI, HAWAII, TAX MAP KEY NO. (2) 4-7-13: 01 (POR.) AND 02 (POR.)".

The purpose of the proposed Bill for an Ordinance is to authorize the reclassification of certain land situated at Lahaina, Maui, Hawaii, identified for real property tax purposes by Tax Map Key No. (2) 4-7-13: 01 (por.) and 02 (por.) from the Agricultural District to the Urban District (Conditional Boundary Amendment), pursuant to Section 205-3.1, Hawaii Revised Statutes, and Chapter 19.68, Maui County Code.

Honorable Kelly T King, Chair  
and Members of the Maui County Council  
May 29, 2019  
Page 2

The proposed Bill for an Ordinance would be conditional upon the Council's passage of a resolution approving, with modifications, the independent development of the Polanui Gardens project by Kipa Centennial LLC, pursuant to Section 201H-38, Hawaii Revised Statutes, as set forth in the developer's 201H application which will be filed with the Council in June.

Please note that the 201H application includes a proposed exemption which, if approved, will enable the appropriate Committee and the full Council to consider an act on this proposed Bill without processing through the Maui Planning Commission under Maui County Code Section 19.510 or Chapter 8 or Article 8 of the Maui County Charter.

I respectfully request that this matter be referred to the appropriate Council committee for review, discussion, and expeditious action.

Thank you for your attention to this matter. Should you have any questions, please feel free to contact me at Ext. 7805.

Sincerely,



LORI TSUHAKO, LSW, ACSW  
Director of Housing and Human Concerns

Attachment

xc: Harmony Hallas, West Maui Land Co.  
Thomas D. Welch, Jr., ESQ., Mancini, Welch & Geiger LLP

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

BILL NO. \_\_\_\_\_ (2019)

A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR 14.453 ACRES SITUATED AT LAHAINA, MAUI, HAWAII, TAX MAP KEY NO. (2) 4-7-13: 01 (POR.) AND 02 (POR.)

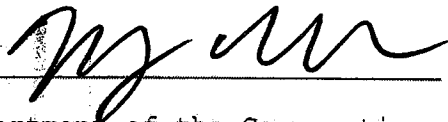
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

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 Lahaina, Maui, Hawaii, identified for real property tax purposes by Tax Map Key No. (2) 4-7-13:01 (por) and 02 (por.), containing a total of 14.453 acres (the "Property"), and more particularly described in Exhibit "A" attached hereto and made a part hereof, and in District Boundary Amendment Map No. DB \_\_\_\_\_ 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

EXHIBIT "A"

Description of T.M.K. (2) 4-7-13: portion of 01 and  
T.M.K. (2) 4-7-13: portion of 02

Land situated on the northerly side of Punakea Loop at  
Polanui, Launiupoko, Lahaina, Maui, Hawaii

Being portions of Lot 1 of Makila Ranches - Phase 1 and  
Remainder Parcel 1 of Honoapiilani Highway Realignment,  
Phase 1B-2, being also portions of Royal Patent 8395, Land  
Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo  
(Certificate of Boundaries No. 10) and Royal Patent 1358,  
Land Commission Award 82 to Thomas Phillips

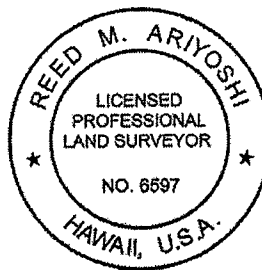
Beginning at a point at the southeasterly corner of this land,  
the azimuth and distance from the southwesterly corner of Lot 1 of  
Makila Ranches - Phase 1 and the southeasterly corner of Remainder  
Parcel 1 of Honoapiilani Highway Realignment, Phase 1B-2 being:  
248° 58' 580.80 feet, the coordinates of said point of beginning  
referred to Government Survey Triangulation Station "LAUNIUPOKO"  
being: 6,095.18 feet North and 6,825.93 feet West and running by  
azimuths measured clockwise from True South:

1. 68° 58' 715.54 feet along the northerly side of  
Punakea Loop to a point;
2. Thence along same on a curve to the left, with the point of  
curvature azimuth from the  
radial point being:  
158° 58' and the point of  
tangency azimuth from the  
radial point being:  
148° 17' 33", having a radius  
of 290.00 feet, the chord  
azimuth and distance being:  
63° 37' 46.5" 53.95 feet to a  
point;
3. 144° 00' 718.47 feet along the remainder of  
Remainder Parcel 1 of  
Honoapiilani Highway  
Realignment, Phase 1B-2, being  
also along the remainder of  
Royal Patent 8395, Land  
Commission Award 8559-B,  
Apana 25 to Wm. C. Lunalilo  
(Certificate of Boundaries  
No. 10) to a point;

4. 234° 00' 208.18 feet along the remainders of  
Remainder Parcel 1 of  
Honoapiilani Highway  
Realignment, Phase 1B-2 and  
Lot 1 of Makila Ranches -  
Phase 1, being also along the  
remainder of Royal Patent 8395,  
Land Commission Award 8559-B,  
Apana 25 to Wm. C. Lunalilo  
(Certificate of Boundaries  
No. 10) to a point;
5. 143° 50' 78.38 feet along the remainder of Lot 1 of  
Makila Ranches Phase 1, being  
also along the remainder of  
Royal Patent 8395, Land  
Commission Award 8559-B,  
Apana 25 to Wm. C. Lunalilo  
(Certificate of Boundaries  
No. 10) to a point;
6. Thence along same on a curve to the right, having a radius of  
20.00 feet, the chord azimuth  
and distance being:  
195° 20' 31.30 feet to a  
point;
7. 246° 50' 305.11 feet along same to a point;
8. 246° 20' 65.58 feet along same to a point;
9. 233° 30' 57.77 feet along same to a point;
10. 229° 20' 89.50 feet along same to a point;
11. 323° 20' 93.61 feet along same to a point;

11. 323° 50'

842.63 feet along the remainder of Lot 1 of Makila Ranches - Phase 1, being also along the remainders of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10) and Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to the point of beginning and containing an area of 14.453 Acres.



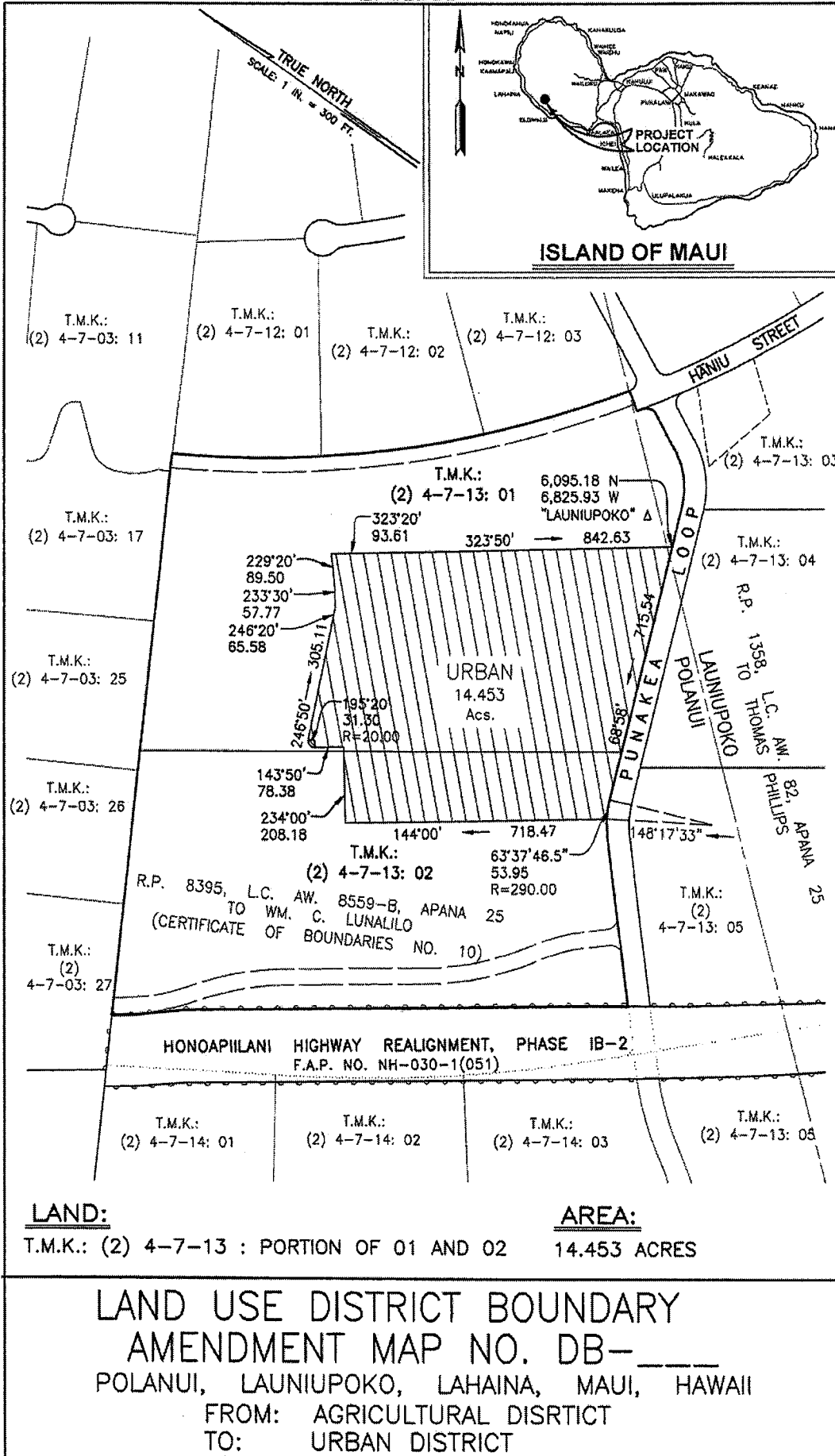
WARREN S. UNEMORI ENGINEERING, INC.  
Wells Street Professional Center  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
May 16, 2019

BY: Reed M. Ariyoshi 04/30/20 Exp.  
Licensed Professional Land Surveyor  
Certificate No. 6597

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

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EXHIBIT "B"



**LAND:**  
T.M.K.: (2) 4-7-13 : PORTION OF 01 AND 02

**AREA:**  
14.453 ACRES

LAND USE DISTRICT BOUNDARY  
AMENDMENT MAP NO. DB-\_\_\_\_  
POLANUI, LAUNIUPOKO, LAHAINA, MAUI, HAWAII  
FROM: AGRICULTURAL DISTRICT  
TO: URBAN DISTRICT

V:\Projdata\18proj\18024\dwg\map\LAND USE-00.dwg

EXHIBIT "C"

CONDITIONS

1. This ordinance is conditional upon the Council's adoption of a resolution approving with modifications the independent development of Polanui Gardens 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 50 residential workforce housing units on the Property with all related infrastructure not later than the fourth (4th) 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 third (3<sup>rd</sup>) 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 Polanui Gardens, 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.

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) 4-7-13:01 (por.) and 02 (por.)

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 KIPA CENTENNIAL LLC, a Colorado limited liability company, whose address is 305 E. Wakea Avenue, Suite 100, Kahului, Hawaii 96732, hereinafter referred to as "Declarant", and who is the owner of that certain land located at Lahaina, Maui, Hawaii, comprised of approximately 14.453 acres and identified for real property tax purposes by Tax Map Key No. (2) 4-7-13:01 (por.) and 02 (por.), hereinafter referred to as the "Property".

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawaii, hereinafter referred to as "Council", is considering the Declarant's Petition for a State land use district boundary amendment for the Property, comprised of approximately 14.453 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. \_\_\_\_\_ attached hereto as Exhibit "2" and made a part hereof; and

WHEREAS, Declarant proposes that the Property be developed as a residential workforce housing project under the name "Polanui Gardens"; 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:

KIPA CENTENNIAL LLC

By \_\_\_\_\_

Its \_\_\_\_\_

APPROVED AS TO FORM  
AND LEGALITY:

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

STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

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

Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii.

My commission expires: \_\_\_\_\_

EXHIBIT "1"

Description of T.M.K. (2) 4-7-13: portion of 01 and  
T.M.K. (2) 4-7-13: portion of 02

Land situated on the northerly side of Punakea Loop at  
Polanui, Launiupoko, Lahaina, Maui, Hawaii

Being portions of Lot 1 of Makila Ranches - Phase 1 and  
Remainder Parcel 1 of Honoapiilani Highway Realignment,  
Phase 1B-2, being also portions of Royal Patent 8395, Land  
Commission Award 8559-B, Apana 25 to Wm. C. Lunaliilo  
(Certificate of Boundaries No. 10) and Royal Patent 1358,  
Land Commission Award 82 to Thomas Phillips

Beginning at a point at the southeasterly corner of this land,  
the azimuth and distance from the southwesterly corner of Lot 1 of  
Makila Ranches - Phase 1 and the southeasterly corner of Remainder  
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being: 6,095.18 feet North and 6,825.93 feet West and running by  
azimuths measured clockwise from True South:

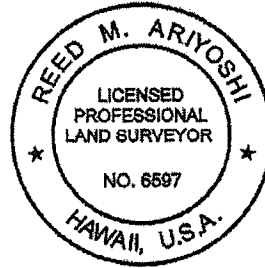
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(Certificate of Boundaries  
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4. 234° 00' 208.18 feet along the remainders of  
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Realignment, Phase 1B-2 and  
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Land Commission Award 8559-B,  
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also along the remainder of  
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Commission Award 8559-B,  
Apana 25 to Wm. C. Lunalilo  
(Certificate of Boundaries  
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6. Thence along same on a curve to the right, having a radius of  
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and distance being:  
195° 20' 31.30 feet to a  
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7. 246° 50' 305.11 feet along same to a point;
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10. 229° 20' 89.50 feet along same to a point;
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11. 323° 50'

842.63 feet along the remainder of Lot 1 of Makila Ranches - Phase 1, being also along the remainders of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunaililo (Certificate of Boundaries No. 10) and Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to the point of beginning and containing an area of 14.453 Acres.



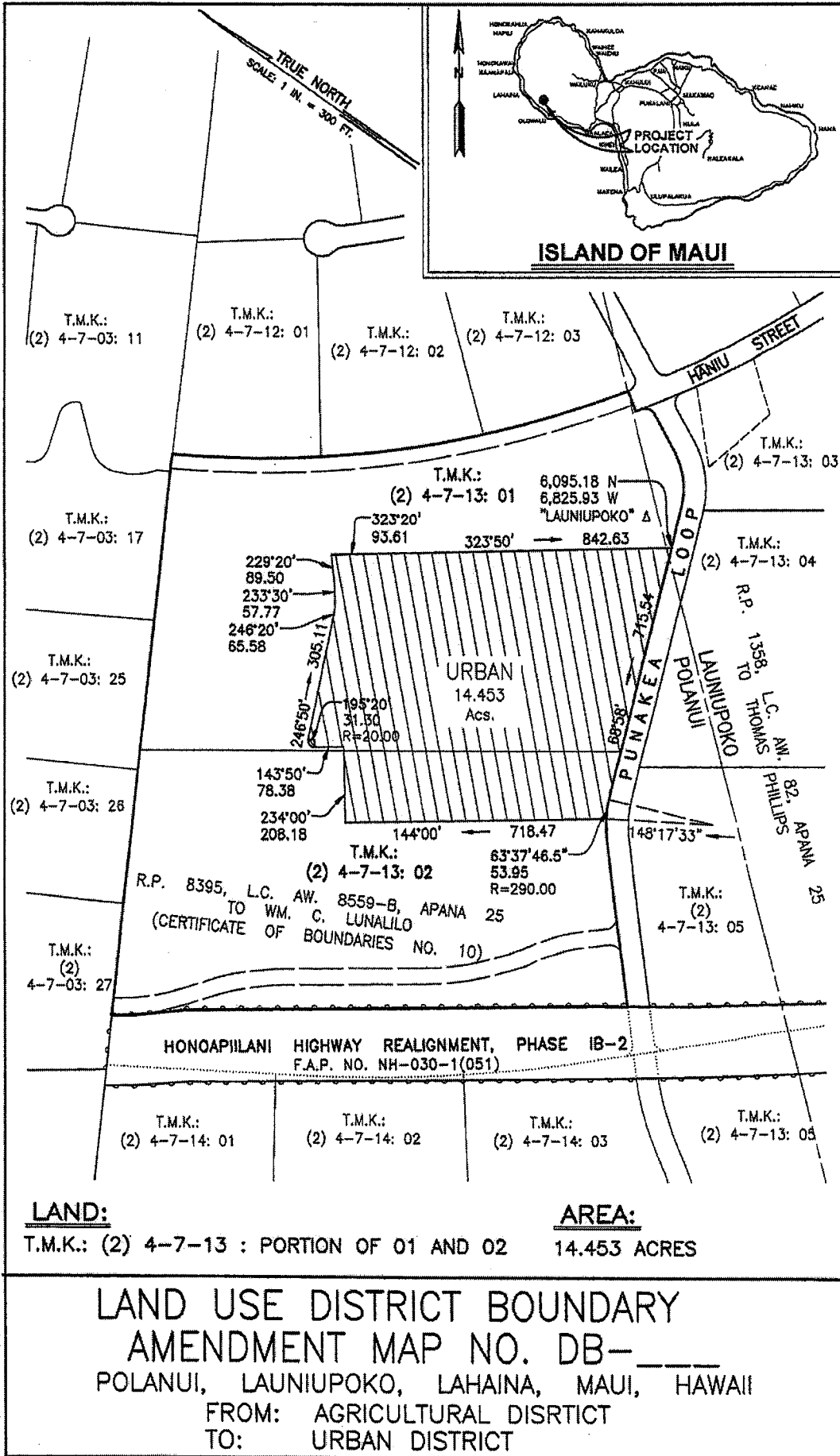
WARREN S. UNEMORI ENGINEERING, INC.  
Wells Street Professional Center  
2145 Wells Street, Suite 403  
Wailuku, Maui, Hawaii 96793  
May 16, 2019

BY: Reed M. Ariyoshi 04/30/20 Exp.  
Licensed Professional Land Surveyor  
Certificate No. 6597

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

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EXHIBIT "2"



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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 Polanui Gardens 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 50 residential workforce housing units on the Property with all related infrastructure not later than the fourth (4th) 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 third (3<sup>rd</sup>) 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.

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