

ORDINANCE NO. _____

BILL NO. 67 (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 POLANUI, LAUNIUPOKO, LAHAINA, MAUI, HAWAII, TAX MAP KEY NOS. (2) 4-7-013:004 (POR.) AND (2) 4-7-013:005 (POR.), CONTAINING A TOTAL OF 14.594 ACRES

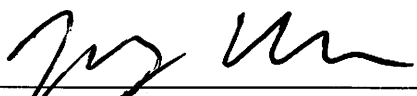
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

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 Polanui, Launiupoko, Lahaina, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Nos. (2) 4-7-013:004 (por.) and (2) 4-7-013:005 (por.), containing a total of 14.594 acres, and more particularly described in Exhibit "A" attached hereto and made a part hereof, and in District Boundary Amendment Map No. DB-818, 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, the State Land Use District classification granted by this ordinance is subject to the conditions set forth in Exhibit "C" hereto and in the Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment, attached hereto and made a part hereof as Exhibit "D," which shall be executed and recorded in the Bureau of Conveyances of the State of Hawaii.

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

APPROVED AS TO FORM
AND LEGALITY:



Deputy Corporation Counsel
County of Maui

EXHIBIT "A"

Makila Kai Proposed Workforce Housing Area

Land situated on the westerly side of Hāniu Street at Polanui, Launiupoko, Lahaina, Maui, Hawaii

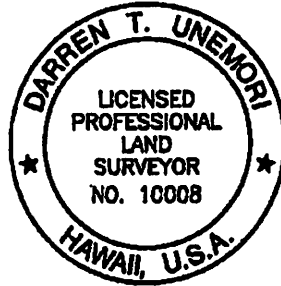
Being portions of Lots 4 and 5 of Makila Ranches - Phase 1, being also portions of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunailo (Certificate of Boundaries No. 10) and Royal Patent 1358, Land Commission Award 82 to Thomas Phillips

Beginning at a point at the northeasterly corner of this land, the azimuth and distance from the northwesterly corner of Lot 4 of the Makila Ranches - Phase 1 being:
248° 58' 255.24 feet, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LAUNIUPOKO" being: 5,911.65 feet North and 7,136.02 feet West and running by azimuths measured clockwise from True South:

1. 321° 30' 951.37 feet along the remainder of Lot 4 of Makila Ranches - Phase 1, being also along the remainders of Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunailo (Certificate of Boundaries No. 10) and Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to a point;
2. Thence along the remainder of Lot 4 of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips on a curve to the left, having a radius of 1,793.00 feet, the chord azimuth and distance being: 319° 00' 156.42 feet to a point;


3. 316° 30' 330.24 feet along same to a point;
4. 46° 09' 188.72 feet along same to a point;
5. 136° 01' 58.27 feet along same to a point;
6. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 290° 28' 14", and the point of tangency azimuth from the radial point being: 321° 47' 42", having a radius of 47.00 feet, the chord azimuth and distance being: 36° 07' 58" 25.38 feet to a point;
7. 316° 01' 99.51 feet along same to a point;
8. 44° 31' 190.77 feet along the remainders of Lots 4 and 5 of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to a point;
9. 136° 00' 498.25 feet along the remainder of Lot 5 of of Makila Ranches - Phase 1, being also along the remainder of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips to a point;
10. Thence along same on a curve to the right having a radius of 3,350.00 feet, the chord azimuth and distance being: 139° 45' 438.20 feet to a point;

11. 143° 30' 709.97 feet along the remainder of Lot 5 of Makila Ranches - Phase 1, being also along the remainders of Royal Patent 1358, Land Commission Award 82 to Thomas Phillips and Royal Patent 8395, Land Commission Award 8559-B, Apana 25 to Wm. C. Lunalilo (Certificate of Boundaries No. 10) to a point;
12. Thence along the southerly side of Lot 12 (Punakea Street) 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), on a curve to the right with the point of curvature azimuth from the radial point being: 145° 01' 38", and the point of tangency azimuth from the radial point being: 158° 58', having a radius of 230.00 feet, the chord azimuth and distance being: 241° 59' 49" 55.82 feet to a point;
13. 248° 58' 360.26 feet along same to the point of beginning and containing an Area of 14.594 Acres.



WARREN S. UNEMORI ENGINEERING, INC.

Wells Street Professional Center
2145 Wells Street, Suite 403
Wailuku, Maui, Hawaii 96793
November 10, 2016

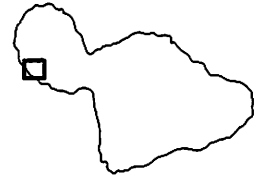
BY:  04/30/18 Exp.
Licensed Professional Land Surveyor
Certificate No. 10008

Note: This metes and bounds description has been prepared for the Makila Kai 201H Application; therefore, described courses do not necessarily reflect boundaries of existing land parcels.

V:\Projdata\16proj\16039\Survey\Desc-Markforce-Housing-Area_rev03.vpd

EXHIBIT "B"

VICINITY MAP



TRUE NORTH

SCALE: 1 IN. == 400 FT.

PUNAKEA STREET

T.M.K.: (2)
4-7-013 : 012

T.M.K.: (2)
4-7-013 : 003

T.M.K.: (2) 4-7-013
: 004

T.M.K.: (2)
4-7-013 : 005

T.M.K.: (2)
4-7-014 : 004

T.M.K.: (2)
4-7-013 : 007

T.M.K.: (2)
4-7-014 : 005

T.M.K.: (2)
4-7-014 : 006

T.M.K.: (2)
4-7-013 : 008

T.M.K.: (2)
4-7-014 : 007

TAX MAP KEY

AREA:

T.M.K.: (2) 4-7-013 : PORTION OF 004 (10.320 ACRES)

14.594 ACRES

T.M.K.: (2) 4-7-013 : PORTION OF 005 (4.274 ACRES)

DISTRICT BOUNDARY AMENDMENT MAP NO. DB-818

DISTRICT BOUNDARY AMENDMENT - POLANUI, LAUNIUPOKO,
LAHAINA, MAUI, HAWAII
FROM AGRICULTURAL (A) TO RURAL (R)

EXHIBIT "C"
CONDITIONS

1. This ordinance is conditional upon the Council's passage of a resolution approving, with modifications, the independent development of Makila Kai, 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 units 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.

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DOCUMENT NO.

Doc A-63810826

DATE - TIME

June 21, 2017 3:29 PM

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) 4-7-013:004 (por.)

Total No. of Pages: 11

Tax Key: (2) 4-7-013:005 (por.)

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

THIS INDENTURE, made this _____ day of _____, 2017, by MAKILA KAI LLC, a Hawaii limited liability company, whose principal place of business is located in Lahaina, Maui, Hawaii, and whose mailing address is P. O. Box 1060, Lahaina, Hawaii 96761, hereinafter referred to as "Declarant", and who is the owner of that certain land located at Polanui, Launiupoko, Lahaina, Maui, Hawaii, comprised of approximately 14.594 acres and identified for real property tax purposes by Tax Map Key Nos. (2) 4-7-013:004 (por.) and (2) 4-7-013:005 (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 14.594

acres, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and is shown on the map attached hereto as Exhibit "2"; and

WHEREAS, Declarant proposes to develop a residential workforce housing project on the Property under the name "Makila Kai"; and

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. 17-85, 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 amendment 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 Rural State land use district boundary amendment 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.

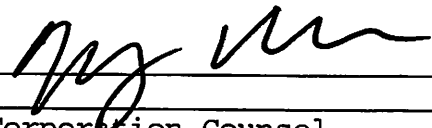
IN WITNESS WHEREOF, the undersigned has executed this Agreement the day and year first above written.

DECLARANT:

MAKILA KAI LLC

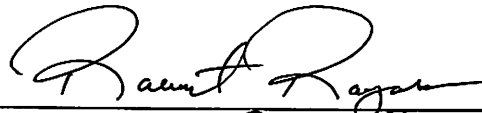
By 
Gregory E. Brown
Its 

APPROVED AS TO FORM
AND LEGALITY:


Corporation Counsel
County of Maui

STATE OF HAWAII)
 Hawaii) SS.
COUNTY OF MAUI)

On June 06, 2017, before me personally appeared Gregory E Brown, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 11-page Unilateral Agreement and Declaration of Conditions for State Land Use District ~~Second~~ ^{Third} Boundary Amendment, dated undated, in the ~~Second~~ ^{Third} 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: Robert Ragasa
Notary Public, State of Hawaii.

My commission expires: 02/21/2020

19

EXHIBIT "1"

**Makila Kai
Proposed Workforce Housing Area**

Land situated on the westerly side of Hāniu Street at Polanui, Launiupoko, Lahaina, Maui, Hawaii

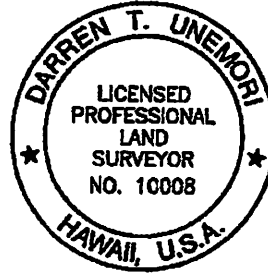
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3. 316° 30' 330.24 feet along same to a point;
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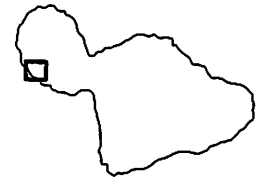
BY:  04/30/18 Exp.
Licensed Professional Land Surveyor
Certificate No. 10008

Note: This metes and bounds description has been prepared for the Makila Kai 201H Application; therefore, described courses do not necessarily reflect boundaries of existing land parcels.

V:\Projdata\16proj\16039\Survey\Desc-Workforce-Housing-Area_rev03.vpd

EXHIBIT "2"

VICINITY MAP



TRUE NORTH

SCALE: 1 IN. == 400 FT.

PUNAKEA STREET

T.M.K.: (2)
4-7-013 : 012

T.M.K.: (2)
4-7-013 : 003

T.M.K.: (2) 4-7-013
: 004

T.M.K.: (2)
4-7-013 : 005

T.M.K.: (2)
4-7-014 : 004

T.M.K.: (2)
4-7-013 : 007

T.M.K.: (2)
4-7-014 : 005

T.M.K.: (2)
4-7-014 : 006

T.M.K.: (2)
4-7-013 : 008

T.M.K.: (2)
4-7-014 : 007

TAX MAP KEY

AREA:

T.M.K.: (2) 4-7-013 : PORTION OF 004 (10.320 ACRES)

14.594 ACRES

T.M.K.: (2) 4-7-013 : PORTION OF 005 (4.274 ACRES)

DISTRICT BOUNDARY AMENDMENT MAP NO. DB-818

DISTRICT BOUNDARY AMENDMENT - POLANUI, LAUNIUPOKO,
LAHAINA, MAUI, HAWAII
FROM AGRICULTURAL (A) TO RURAL (R)

U4pr01/U4UUb/dwg/maps/DBA-map00.dwg

EXHIBIT "3"

CONDITIONS

1. This ordinance is conditional upon the Council's passage of a resolution approving, with modifications, the independent development of Makila Kai, 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 units 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.

DIGEST

ORDINANCE NO. _____
BILL NO. 67 (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 POLANUI, LAUNIUPOKO, LAHAINA, MAUI, HAWAII, TAX MAP KEY NOS. (2) 4-7-013:004 (POR.) AND (2) 4-7-013:005 (POR.), CONTAINING A TOTAL OF 14.594 ACRES

This bill proposes to grant Makila Kai LLC a State Land Use District Boundary Amendment from Agricultural District to Rural District for approximately 14.594 acres situated along Haniu Street, Polanui, Launiupoko, Lahaina, Maui, Hawaii, identified for real property tax purposes as portions by Tax Map Key Nos. (2) 4-7-013:004 (por.) and (2) 4-7-013:005 (por.), to facilitate the development of a Chapter 201H, Hawaii Revised Statutes, affordable housing project.

I, DENNIS A. MATEO, County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 67 (2017) was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 16th day of June, 2017, by the following vote:

AYES: Councilmembers Alika Atay, S. Stacy Crivello, G. Riki Hokama, Kelly T. King, Yuki Lei K. Sugimura, Vice-Chair Robert Carroll, and Chair Michael B. White.

NOES: Councilmember Eleanora Cochran.

EXCUSED: Councilmember Donald S. Guzman.

DATED at Wailuku, Maui, Hawaii, this 19th of June, 2017.



DENNIS A. MATEO, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.