

REQUEST FOR LEGAL SERVICES

Date: October 1, 2019
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: David Galazin, Esq.

Subject: COMMUNITY PLAN AMENDMENT AND CHANGE IN ZONING FOR ST. ANTHONY CHURCH AND SCHOOLS (WAILUKU) (PSLU-31)

Background Data: Please review the attached Unilateral Agreements (three originals) and if appropriate, approve them as to form and legality.

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

Requestor's signature <u>Tamara A.M. Paltin</u> Tamara Paltin	Contact Person <u>James Krueger</u> (Telephone Extension: 7761)
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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): October 9, 2019
REASON: For posting on October 11, 2019 for the October 18, 2019 Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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)

pslu:ltr:031acc03:jgk

Attachments

LAND COURT SYSTEM

REGULAR SYSTEM

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

Total Number of Pages: 12

Affects Tax Map Key (Maui) (2) 3-4-019:003 and (2) 3-4-018:106

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 26 day of September, 2019, hereinafter referred to as "DECLARATION" or "UNILATERAL AGREEMENT", by Roman Catholic Church in the State of Hawaii, a Hawai`i corporation whose principal place of business is located in Honolulu, Oahu, Hawaii, and whose mailing address is 1184 Bishop St. Honolulu, Hawaii, 96813, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Wailuku, Maui, Hawai`i, comprised of approximately 14.6303 acres, and identified for real property tax purposes by Tax Map Key No(s). (2) 3-4-019:003 and (2) 3-4-018:106, hereinafter referred to as "PROPERTY".

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai`i, hereinafter referred to as "Council", is considering the establishment of zoning for the Property, comprised of approximately 14.6303 acres, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and which is more particularly identified in Land Zoning Map No.

L-378, which is attached hereto and made a part hereof as Exhibit "2"; and

WHEREAS, the Council recommends through its Planning and Sustainable Land Use Committee, Committee Report No. _____, that said establishment of zoning be approved for passage on first reading subject to certain conditions, pursuant to Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the conditional zoning provisions of Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.510.050, Maui County Code, relating to conditional zoning;

2. That until written release by the County of Maui, the 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 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 this Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of P-2 Public/Quasi-Public District zoning and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawai'i;

6. That the Declarant agrees to develop said 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 zoning ordinance;

7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use;

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors and any other persons who claim an interest in said land, and the County of Maui shall have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may at any time file a petition for the removal of the conditions and terminate this Unilateral Agreement, such petition to be processed in the same manner as petitions for change in zoning.

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.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

[SIGNATURE PAGES FOLLOW]

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

DECLARANT:

Roman Catholic Church in the
State of Hawaii



Gary L. Secor
Vice President

APPROVED AS TO FORM AND LEGALITY:

DAVID GALAZIN
Deputy Corporation Counsel
County of Maui

STATE OF Hawaii

City and County of Honolulu

)
) SS.
)

On this 26 day of September, 2019, before me personally appeared Gary L. Secor, 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.



Denise R Oliveira

Notary Public, State of Hawaii

Print Name: Denise R. Oliveira

My Commission Expires: 07/28/2023

NOTARY PUBLIC CERTIFICATION

Doc. Date: September 26, 2019 # Pages: 12

Notary Name: Denise R. Oliveira Judicial Circuit: First

Document Description: Unilateral Agreement and Declaration for Conditional Zoning

Notary Signature: Denise R. Oliveira

Date: September 26, 2019



EXHIBIT "1"

Saint Anthony's Premises

All of that certain parcel of land (being portions of Deed from Kamehameha IV to Kealakai (unrecorded), Deed from Kamehameha IV to Louis Maigret dated July 19, 1858 (unrecorded), Deed from Kamehameha IV to Louis Maigret dated January 1858, recorded in Book 904 at Page 471, Royal Patent 5531, Land Commission Award 1742, Apana 4 to Kaauwai, and portion of Grant 3343 to Claus Spreckels), situated between Mill Street and Lower Main Street at Papohaku, Wailuku, Maui, Hawaii.

Beginning at a point at the Northeast corner of this piece of land, being also the Northwest corner of State of Hawaii LOD S-20714, Executive Order No. 2129, and on the Southeasterly side of Mill Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 4,881.98 feet North and 68.28 feet East, and running by true azimuths measured clockwise from South:

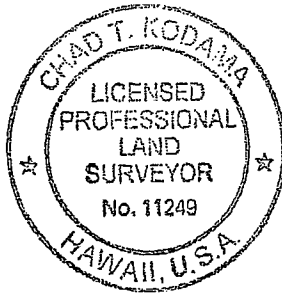
- | | | | | |
|----|------|---------|------------|---|
| 1. | 330° | 13' | 57.06 feet | along State of Hawaii LOD S-20714, Executive Order No. 2129, along Hale Makua premises; |
| 2. | 330° | 35' | 56.13 feet | along same; |
| 3. | 251° | 13' | 1.53 feet | along same; |
| 4. | 332° | 52' 30" | 73.28 feet | along same; |
| 5. | 331° | 26' | 45.00 feet | along Deed from Kamehameha IV to Kawahie (unrecorded), along Hale Makua premises; |
| 6. | 58° | 33' | 47.90 feet | along remainder of Deed from Kamehameha IV to Louis Maigret dated January 1858 and recorded in Book 904 at page 471, along Hale Makua premises; |

- | | | |
|-----|--|---|
| 7. | 333° 54' | 342.50 feet along remainder of Deed from Kamehameha IV to Louis Maigret dated January 1858 and recorded in Book 904 at page 471, along remainder of Deed from Kamehameha IV to Louis Maigret dated July 19, 1858 (unrecorded), along Hale Makua premises; |
| 8. | 33° 42' | 415.55 feet along the Northwesterly side of Lower Main Street; |
| 9. | 29° 31' | 439.00 feet along same; |
| 10. | 146° 58' | 221.27 feet along Lot B of Wailuku Sugar Company's Right of Way Subdivision of Parcel 48, along portion of Deed from the Commissioners of Crown Lands to Keahi dated July 2, 1874 and recorded in Book 89 at page 236; |
| 11. | 169° 50' | 102.93 feet along remainder of Deed from Kamehameha IV to Kealakai; |
| 12. | 146° 58' | 164.29 feet along same; |
| 13. | 146° 49' | 525.32 feet along same; |
| 14. | Thence along the Southeasterly side of Mill Street on a curve to the left with a radius of 1458.40 feet, the chord azimuth and distance being: | |
| | 238° 59' 57" | 324.25 feet; |
| 15. | 232° 37' | 128.86 feet along the Southeasterly side of Mill Street; |

16.. Thence along same, on a curve to the right with a radius of 792.51 feet, the chord azimuth and distance being:

246° 55' 20" 391.65 feet;

to the point of beginning and containing an area of 14.317 Acres, more or less.



December 30, 2017
Honolulu, Hawaii
Tax Map Key: (2) 3-4-019: 003

Chad T. Kodama

Chad T. Kodama
Licensed Professional Land Surveyor
Certificate Number 11249
License Expires April 30, 2018

LOT B

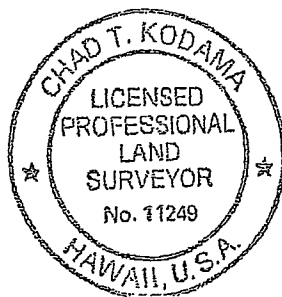
Lot B of Wailuku Sugar Company's Right of Way Subdivision of Parcel 48.

Being a portion of the land conveyed by Deed from the Commissioners of Crown Lands to Keahi dated July 2, 1874 and recorded in Book 89, page 236

Situated in the Ili of Kapapohaku, Wailuku, Maui, Hawaii.

Beginning at the East corner of this parcel of land, on the Northwesterly side of Lower Main Street, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 3,618.93 feet North and 157.10 feet West and running by azimuths measured clockwise from true South:

1. 26° 58' 142.43 feet along the Northwesterly side of Lower Main Street;
2. 169° 50' 317.43 feet along Lot A of Wailuku Sugar Company's Right of Way Subdivision of Parcel 48;
3. 326° 58' 221.27 feet along the Southwesterly side of "Saint Anthony's Premises", being also portion of Deed from Kamehameha IV to Kealakai (unrecorded) to the point of beginning and containing an area of 13,647 square feet;



Chad T. Kodama

Chad T. Kodama
Licensed Professional Land Surveyor
Certificate Number 11249
License Expires April 30, 2018

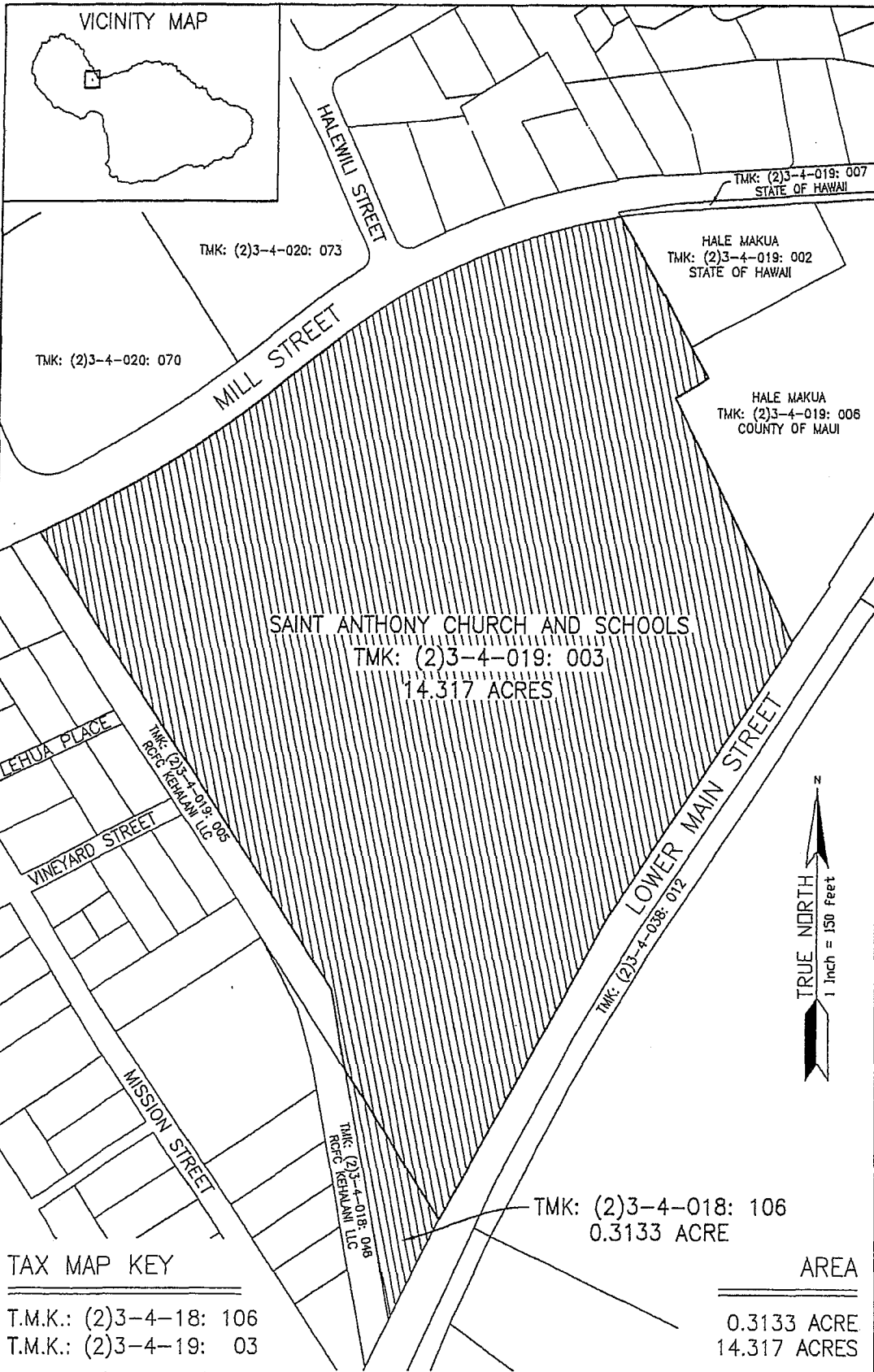
December 30, 2017
Honolulu, Hawaii
Tax Map Key: (2) 3-4-018: 106

/ Easement 2

END EXHIBIT "1"

ControlPoint Surveying, Inc.
615 Piikoi Street, Suite 700
Honolulu, Hawaii 96814

EXHIBIT "2"



LAND ZONING MAP NO. L-378

CHANGE IN ZONING - WAILUKU, MAUI, HAWAII
FROM R-1 RESIDENTIAL TO P-2 PUBLIC/QUASI-PUBLIC DISTRICT

EXHIBIT "3"

CONDITION OF ZONING

1. Roman Catholic Church in the State of Hawaii and any future owner or lessee are prohibited from conducting the following uses on the property: cemeteries and crematoriums, fire and police stations, government buildings and facilities, hospitals, water treatment facilities, and wastewater treatment facilities.