

REQUEST FOR LEGAL SERVICES

Date: April 22, 2024
From: Tasha Kama, Chair
Housing and Land Use Committee

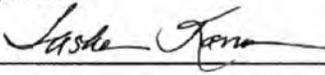
RECEIVED
CORPORATION COUNSEL
24 APR 23 8:19

TRANSMITTAL
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: **DISTRICT BOUNDARY AMENDMENT AND CHANGE IN ZONING FOR MOLOKAI EDUCATION CENTER (KAUNAKAKAI) (HLU-11)**

Background Data: Please review the attached revised proposed bills and four originals of each unilateral agreement. Please submit your response to hlu.committee@mauicounty.us with reference to HLU-11, along with all eight original UAs.

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

Requestor's signature  Tasha Kama	Contact Person <u>Paige Greco or Carla Nakata</u> (Telephone Extension: 7660 or 5519, respectively)
--	---

- ROUTINE (WITHIN 15 WORKING DAYS)
- PRIORITY (WITHIN 10 WORKING DAYS)
- RUSH (WITHIN 5 WORKING DAYS)
- URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): April 24, 2024
REASON: For posting on the May 3, 2024, Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: <u>MJH</u>	<u>2023-0141</u>	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 4/25/24

By MJH

(Rev. 7/03)

hlu:ltr:01 lacc02:pmg

Attachments

ORDINANCE NO. _____

BILL NO. _____ (2024)

A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL DISTRICT BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT KAUNAKAKAI, MOLOKAI, HAWAII, TAX MAP KEYS (2) 5-3-003:013 AND (2) 5-3-003:014

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

SECTION 1. Under Section 205-3.1, Hawai'i Revised Statutes, and Chapter 19.68, Maui County Code, the State Land Use District classification is reclassified from Agricultural District to Urban District (Conditional District Boundary Amendment) for lands situated at Kaunakakai, Molokai, Hawai'i, and identified for real property tax purposes as tax map keys (2) 5-3-003:013 and (2) 5-3-003:014, together comprising 5.27 acres, and more particularly described in the attached Exhibit "A," and in District Boundary Amendment Map 109, attached as Exhibit "B."

SECTION 2. Under Section 19.68.040, Maui County Code, the State Land Use District classification granted by this Ordinance is subject to the conditions in Exhibit "C," as attached, and the Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment, attached as Exhibit "D."

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui

hlu:misc:011abill02:pmg

EXHIBIT "A"

Legal Meets and Bounds Lot 936 and Lot 937

LOT 936

Being Lot 936 as shown on Map 98 of Land Court Application 632.

Land situated at Kaunakakai, Molokai, Hawaii

Beginning at the Southwest corner of this piece of land, being also the Southeast corner of Lot 935 as shown on Map 98 of Land Court Application 632, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 15,688.66 feet South and 648.84 feet West and running by azimuths measured clockwise from true South:

- | | | | |
|-----------|---------------------|--------------------|---|
| 1. | 191° 20' | 341.15 feet | along Lot 935 as shown on Map 98 of Land Court Application 632; |
| 2. | 290° 10' | 488.94 feet | along Lot 938-A as shown on Map 104 of Land Court Application 632; |
| 3. | 395° 50' | 350.11 feet | along Lot 937 as shown on Map 98 of Land Court Application 632; |
| 4. | 110° 10' | 186.77 feet | along the North side of Kamehameha V Highway; |
| 5. | 112° 23' | 40.47 feet | along the same; |
| 6. | 108° 56' 15" | 73.03 feet | along the same; |
| 7. | 110° 10' | 41.79 feet | along same, to the point of beginning and containing an area of 3.213 acres. |

Subject, however, to Easements 128 and 130, as shown on Map 98 of Land Court Application 632.



March 22, 2019
Honolulu, Hawaii


Alden S. Kajloka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003: 013

LOT 937

Being Lot 937 as shown on Map 98 of Land Court Application 632.

Land situated at Kaunakakai, Molokai, Hawaii

Beginning at the Southwest corner of this piece of land, being also the Southeast corner of Lot 936 as shown on Map 98 of Land Court Application 632, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 15,806.57 feet South and 327.80 feet West and running by azimuths measured clockwise from true South:

1. 215° 50' 417.23 feet along Lot 936 and 938 as shown on Map 98 of Land Court Application 632;
2. 290° 10' 171.78 feet along the same;
3. Thence, along Westerty side of Alanui' Kaimile Street, on a curve to the left with a radius of 2,536.00 feet, the chord azimuth and distance being:
22° 03' 05.5" 166.82 feet;
4. 20° 10' 205.00 feet along the same;
5. Thence, along same, on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
65° 10' 42.43 feet;
6. 110° 10' 248.96 feet along the North side of Kamehameha V Highway, to the point of beginning and containing an area of 2.056 acres.

Subject, however, to Easements 128, 130, 131, 132 and 133 as shown on Map 98 of Land Court Application 632.



March 22, 2019
Honolulu, Hawaii


Alden S. Kajioka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court Certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003: 014

EXHIBIT "B"

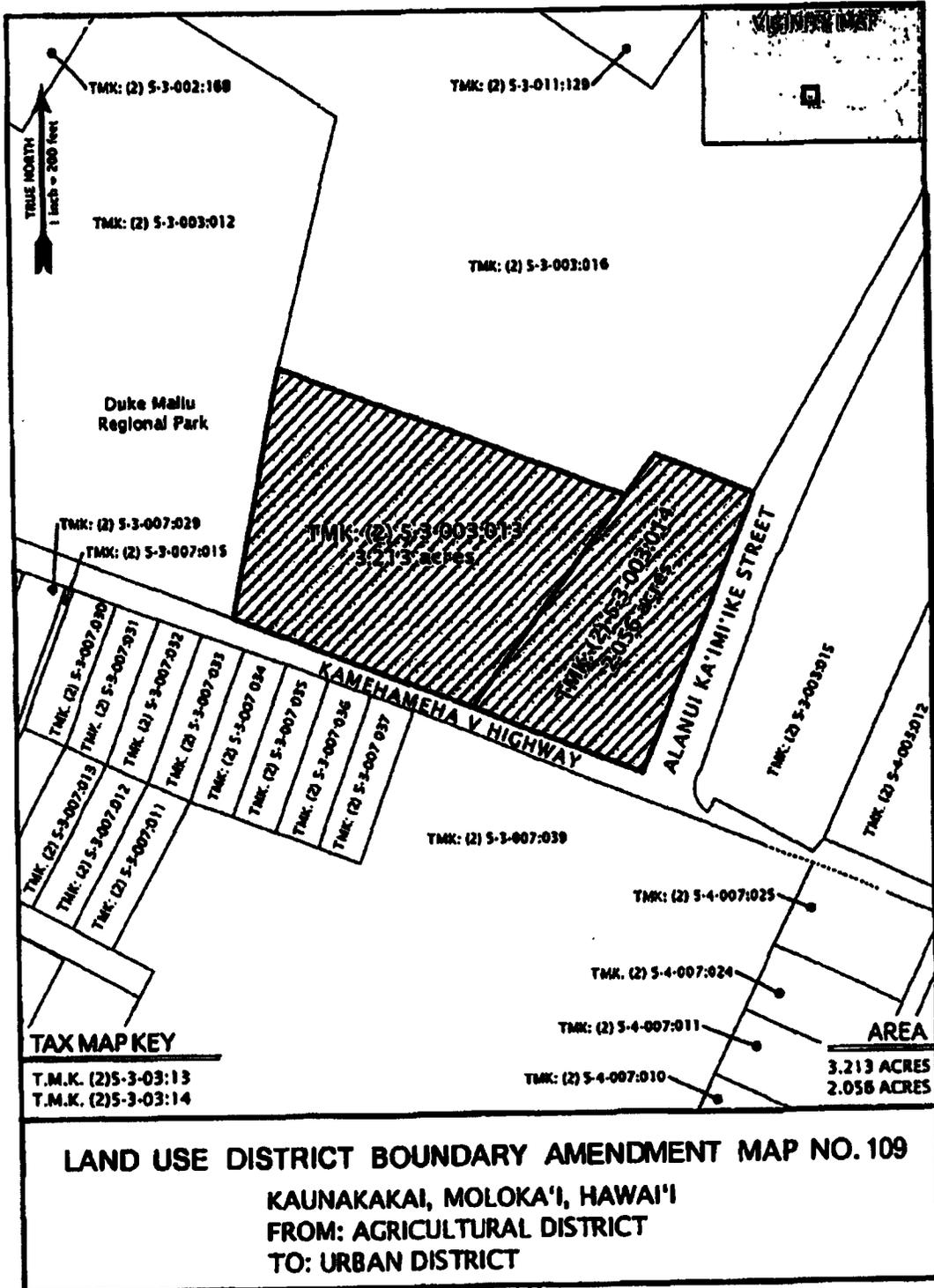


Exhibit "C"

As used in these conditions, "petition area" means tax map key (2) 5-3-003:013 or (2) 5-3-003:014, or both.

1. There shall be a prohibition on any action that would interfere with or restrain farming operations adjacent to the petition area 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.
2. 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 land that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under Chapter 165, Hawaii Revised Statutes, the Hawaii Right to Farm Act, and that the notice shall be included in any disclosures 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 (X) Pickup (): To:

Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Total Number of Pages: _____

(Including exhibits, notary certification pages, and all other components)

Affects Tax Map Keys (Maui) (2) 5-3-003:013 and (2) 5-3-003:014

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

THIS INDENTURE, referred to as "**Declaration**" or "**Unilateral Agreement**," is made this, 12TH day of April, 2024, by the following "Declarant," who is the owner of real property located at 375 Kamehameha V Highway, Kaunakakai, Hawaii, referred to as "**the Property**," comprised of 5.27 acres, and identified for real property tax purposes as Tax Map Keys: (2) 5-3-003:013 and (2) 5-3-003:014.

The Declarant is the University of Hawai'i, whose principal address is at 2444 Dole Street, Bachman Hall, Honolulu, Hawaii, and whose authorized contact person is the University of Hawai'i Vice President for Budget and Finance/Chief Financial Officer, who is currently Kalbert K. Young, and any of his successors.

WITNESSETH:

WHEREAS, the Council is considering the Declarant's Petition ("**Petition**") for a State Land Use District Boundary Amendment for the Property, described in Exhibit "1" and more particularly identified in Exhibit "2," State Land Use District Boundary Amendment Map No. 109; and

WHEREAS, the Housing and Land Use Committee recommended passage of the Petition on first reading of said State Land Use District Boundary Amendment for the Property in accordance with Section 19.68.040, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this Unilateral Agreement in accordance with Section 19.68.040, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. In accordance with Maui County Code. That this Declaration is made in accordance with the provisions of Section 19.68.040, Maui County Code, relating to State Land Use District Boundary Amendments;

2. Binding until Maui County written release. That until written release by the County of Maui, (a) the Property, and all its parts, are held subject to this Declaration's covenants, conditions, and restrictions, which are effective as to and run with 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 to the Property by the Declarant, the County of Maui, or any successor or assign; (b) the acquisition of any right, title or interest *in* or with respect to the Property by any person or entity constitute acceptance of all of the covenants, conditions, and restrictions of this Declaration by the person or entity; and (c) upon any transfer of any right, title, or interest in or with respect to the Property, the transferee assumes, is bound by, and is obligated to observe and perform all of the covenants, conditions, and restrictions of this Declaration;

3. Running with the Land. That this Declaration and all of its covenants, conditions, and restrictions contained are effective as to and run with the land in perpetuity, or until the Declarant notifies the County Department of Planning that any of the covenants, conditions, and restrictions are satisfied by the Declarant, and the Department verifies the satisfaction and provides a written release of the covenant, condition, or restriction;

4. University of Hawaii as Declarant. That the term "Declarant" and any pronoun in reference to it, wherever used in this Declaration, means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and includes any corporation or any other entity, and means and includes the University of Hawai'i, the state university and a body corporate of the State of Hawai'i, as Declarant and the Declarant's successors, and assigns;

5. Effective as of date State Land Use District Boundary Amendment ordinance approved. That this Declaration is fully effective on the effective date of the State Land Use District Boundary Amendment ordinance approving the establishment of a State Land Use reclassification from the Agricultural District to the Urban District for the Property;

6. Develop consistent with State Land Use District Boundary Amendment conditions. That the Declarant agrees to develop the Property in conformance with the conditions stated in Exhibit 3 and in the State Land Use District Boundary Amendment ordinance;

7. Conditions reasonable and rationally related to public health, safety and welfare. That the conditions imposed are reasonable and rationally related to the objective of

preserving the public health, safety, and general welfare and fulfill the need for the public service demands created by the Property's proposed use;

8. Conditions enforceable by County of Maui. AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County of Maui, the conditions imposed in this Declaration run with the land identified in this Declaration and bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Property. The Declarant further understands and agrees that the County of Maui has the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, with the understanding the Declarant or its successors and assigns may at any time file a petition with the Council or the Department for the removal of the conditions and termination of this Unilateral Agreement, which will 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 will be deemed to be an original, but all of which, taken together, constitute one and the same Declaration.

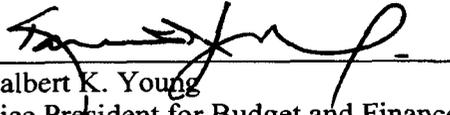
Any persons signing this Unilateral Agreement represent that they are duly authorized and have legal capacity to execute and deliver this Unilateral Agreement. Each party represents to the other that the execution and delivery of this Unilateral Agreement and the performance of the party's obligations have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on the party and enforceable in accordance with its terms.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year indicated on the following notary public certification pages.

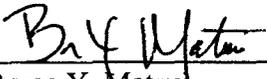
DECLARANT:

University of Hawaii

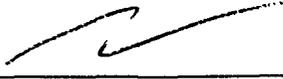
By: 
Kalbert K. Young
Vice President for Budget and Finance/Chief
Financial Officer

Approved as to Form

Office of University General Counsel

By: 
Bruce Y. Matsui
Associate General Counsel

Approved as to Form and Legality

By: 
Print Name: Michael J. Hopper
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 12th day of April 2024, before me personally appeared KALBERT K. YOUNG, to me personally known, who being by me duly sworn, did say that he is the Vice President for Budget and Finance/Chief Financial Officer of the UNIVERSITY OF HAWAII, the state university and a body corporate of the State of Hawai'i, and that said instrument was signed on behalf of said UNIVERSITY OF HAWAII by authority of its Board of Regents, and said KALBERT K. YOUNG, as said Vice President for Budget and Finance/Chief Financial Officer, acknowledged said instrument to be the free act and deed of said University of Hawai'i.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Denise M. Miura
Notary Public, State of HAWAII
Print Name: Denise M. Miura
My Commission Expires: MAR 17 2026

NOTARY PUBLIC CERTIFICATION

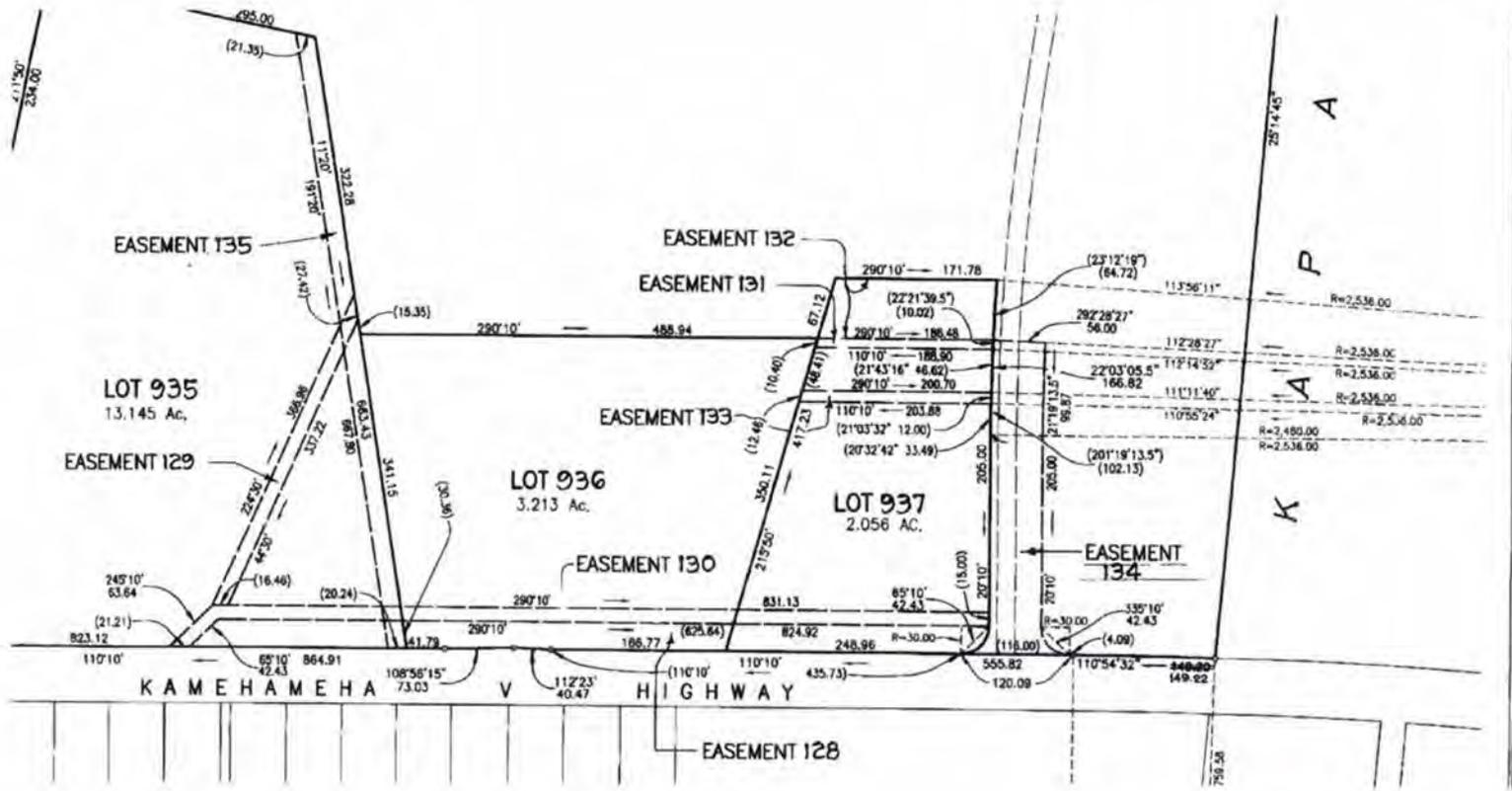
Doc Date: Undated at time of notarization. # Pages: 15
Notary Name: Denise M. Miura Judicial Circuit: 1st
Document Description: unilateral Agreement + Declaration of conditions for state land use District Boundary Amendment
Notary Signature: Denise M. Miura
Date: APR 12 2024



EXHIBIT "1"

Description of the Property

Legal Meets and Bounds Lot 936 and Lot 937



LAND COURT APPLICATION 632
(MAP 98)

LOT 936

Being Lot 936 as shown on Map 98 of Land Court Application 632.

Land situated at Kaunakakai, Molokai, Hawaii

Beginning at the Southwest corner of this piece of land, being also the Southeast corner of Lot 935 as shown on Map 98 of Land Court Application 632, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 15,688.66 feet South and 648.84 feet West and running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|-------------|--|
| 1. | 191° 20' | 341.15 feet | along Lot 935 as shown on Map 98 of Land Court Application 632; |
| 2. | 290° 10' | 488.94 feet | along Lot 938-A as shown on Map 104 of Land Court Application 632; |
| 3. | 395° 50' | 350.11 feet | along Lot 937 as shown on Map 98 of Land Court Application 632; |
| 4. | 110° 10' | 186.77 feet | along the North side of Kamehameha V Highway; |
| 5. | 112° 23' | 40.47 feet | along the same; |
| 6. | 108° 56' 15" | 73.03 feet | along the same; |
| 7. | 110° 10' | 41.79 feet | along same, to the point of beginning and containing an area of 3.213 acres. |

Subject, however, to Easements 128 and 130, as shown on Map 98 of Land Court Application 632.



March 22, 2019
Honolulu, Hawaii

A handwritten signature in black ink, appearing to read "Alden S. Kajioka", written over a horizontal line.

Alden S. Kajioka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003. 013

Subject, however, to Easements 128, 130, 131, 132 and 133 as shown on Map 98 of Land Court Application 632.



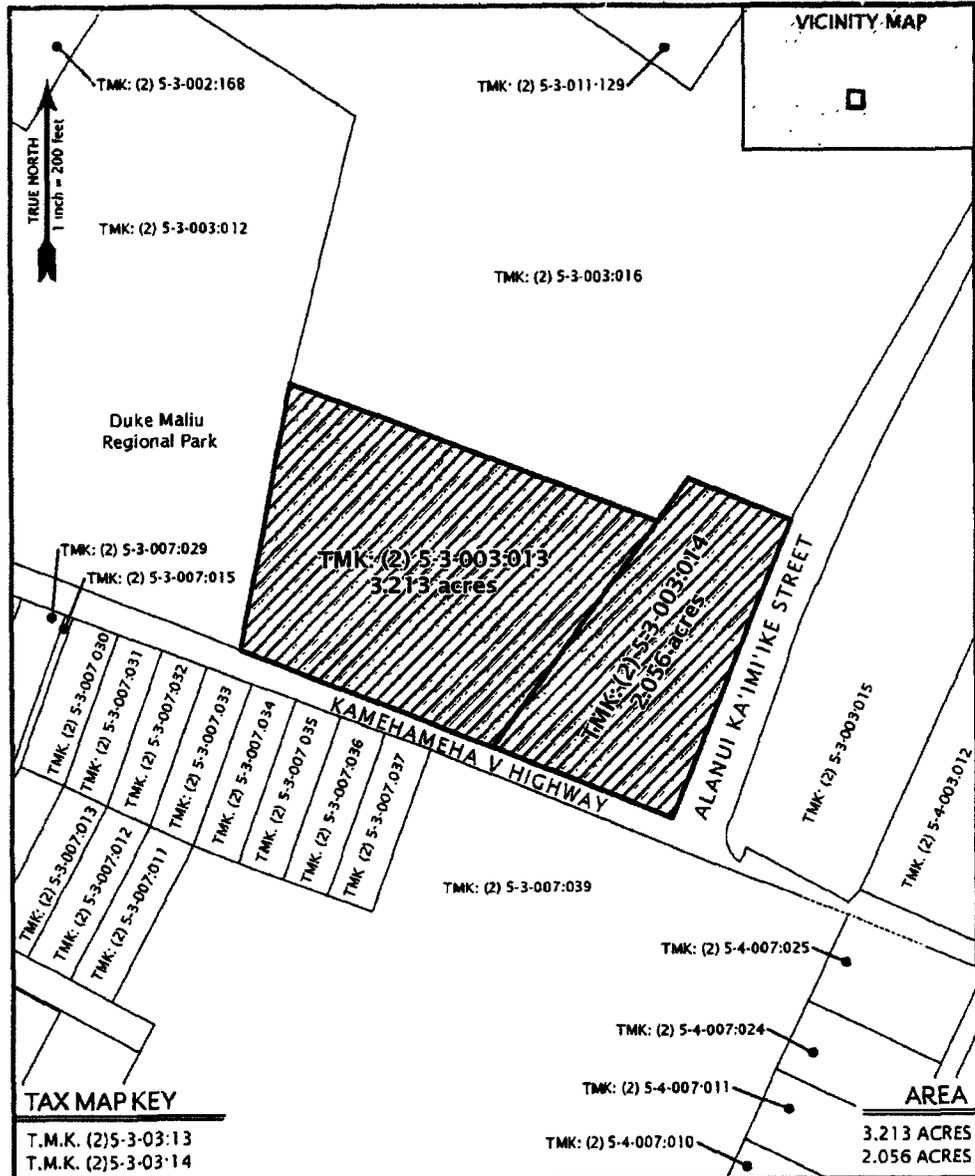
March 22, 2019
Honolulu, Hawaii


Alden S. Kajioka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court Certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003: 014

EXHIBIT "2"

STATE LAND USE DISTRICT BOUNDARY AMENDMENT MAP NO. 109



LAND USE DISTRICT BOUNDARY AMENDMENT MAP NO.109
KAUNAKAKAI, MOLOKA'I, HAWAI'I
FROM: AGRICULTURAL DISTRICT
TO: URBAN DISTRICT

EXHIBIT "3"

CONDITIONS

As used in these conditions, "petition area" means tax map key (2) 5-3-003:013 or (2) 5-3-003:014, or both.

1. There shall be a prohibition on any action that would interfere with or restrain farming operations adjacent to the petition area 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.
2. 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 land that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under Chapter 165, Hawaii Revised Statutes, the Hawaii Right to Farm Act, and that the notice shall be included in any disclosures required for the sale or transfer of real property or any interest in real property.

ORDINANCE NO. _____

BILL NO. _____ (2024)

A BILL FOR AN ORDINANCE TO CHANGE ZONING (CONDITIONAL ZONING)
FROM INTERIM DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT FOR
PROPERTY SITUATED AT KAUNAKAKAI, MOLOKAI, HAWAII,
TAX MAP KEYS (2) 5-3-003:013 AND (2) 5-3-003:014

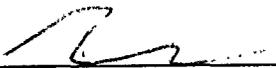
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Under Chapters 19.31 and 19.510, Maui County Code, a change in zoning from Interim District to P-1 Public/Quasi-Public District (Conditional Zoning) is granted for lands situated at Kaunakakai, Molokai, Hawai'i, identified for real property tax purposes as tax map keys (2) 5-3-003:013 and (2) 5-3-003:014, together comprising 5.27 acres, and more particularly described in the attached Exhibit "A," and in Land Zoning Map L-1827, attached as Exhibit "B."

SECTION 2. Under Section 19.510.050, Maui County Code, the Change in Zoning granted by this Ordinance is subject to the conditions in Exhibit "C," as attached, and the Unilateral Agreement and Declaration for Conditional Zoning, attached as Exhibit "D."

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

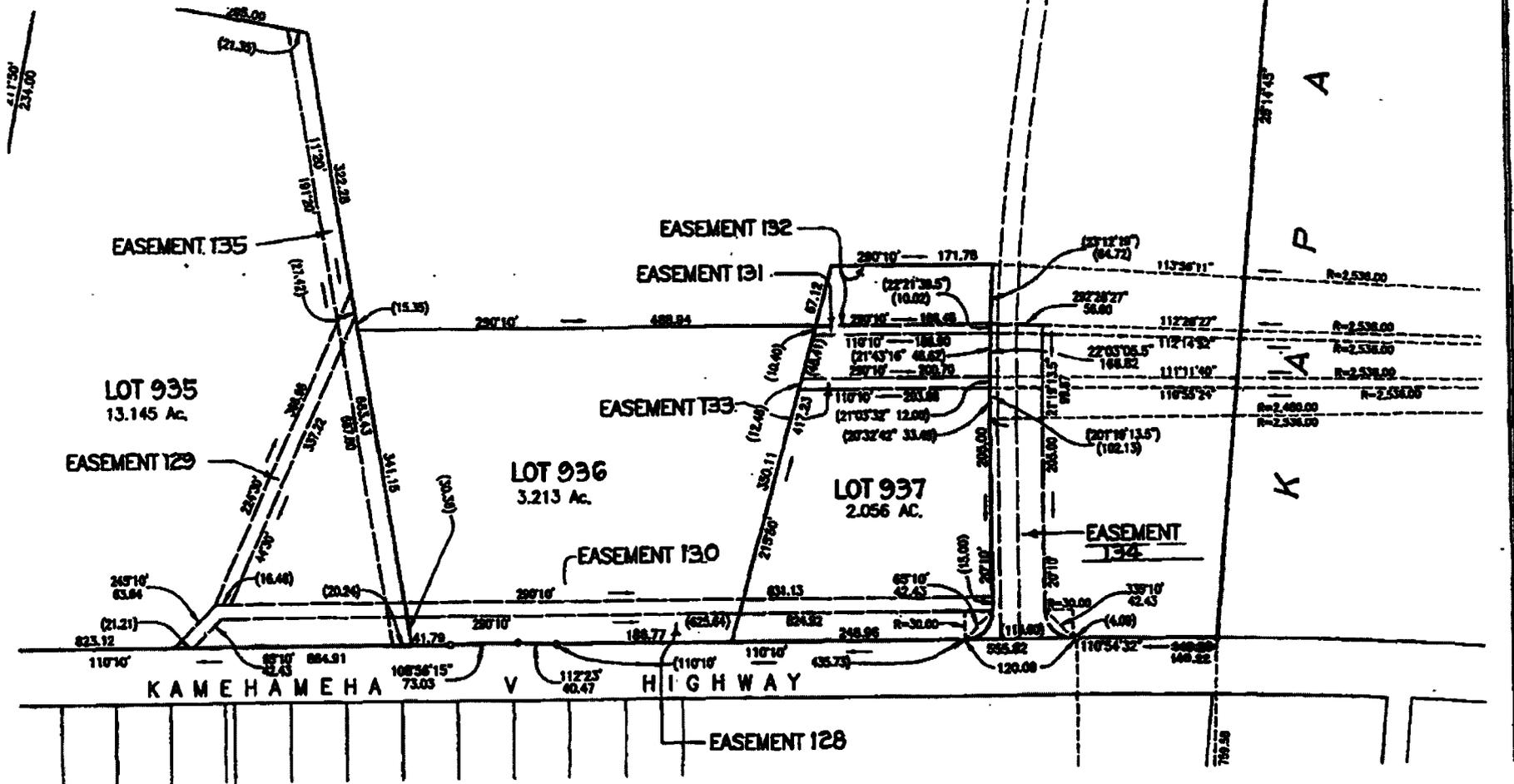


Deputy Corporation Counsel
Department of the Corporation Counsel
County of Maui

hlu:misc:011abill03:pmg

EXHIBIT "A"

Legal Meets and Bounds Lot 936 and Lot 937



LAND COURT APPLICATION 632
 (MAP 98)

LOT 936

Being Lot 936 as shown on Map 98 of Land Court Application 632.

Land situated at Kaunakakai, Molokai, Hawaii

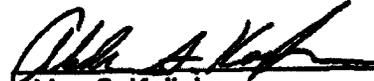
Beginning at the Southwest corner of this piece of land, being also the Southeast corner of Lot 935 as shown on Map 98 of Land Court Application 632, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 15,688.66 feet South and 848.84 feet West and running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|-------------|--|
| 1. | 191° 20' | 341.15 feet | along Lot 935 as shown on Map 98 of Land Court Application 632; |
| 2. | 290° 10' | 488.94 feet | along Lot 938-A as shown on Map 104 of Land Court Application 632; |
| 3. | 395° 50' | 350.11 feet | along Lot 937 as shown on Map 98 of Land Court Application 632; |
| 4. | 110° 10' | 186.77 feet | along the North side of Kamehameha V Highway; |
| 5. | 112° 23' | 40.47 feet | along the same; |
| 6. | 108° 56' 15" | 73.03 feet | along the same; |
| 7. | 110° 10' | 41.79 feet | along same, to the point of beginning and containing an area of 3.213 acres. |

Subject, however, to Easements 128 and 130, as shown on Map 98 of Land Court Application 632.



March 22, 2019
Honolulu, Hawaii


Alden S. Kajioka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003: 013

Subject, however, to Easements 128, 130, 131, 132 and 133 as shown on Map 98 of Land Court Application 632.

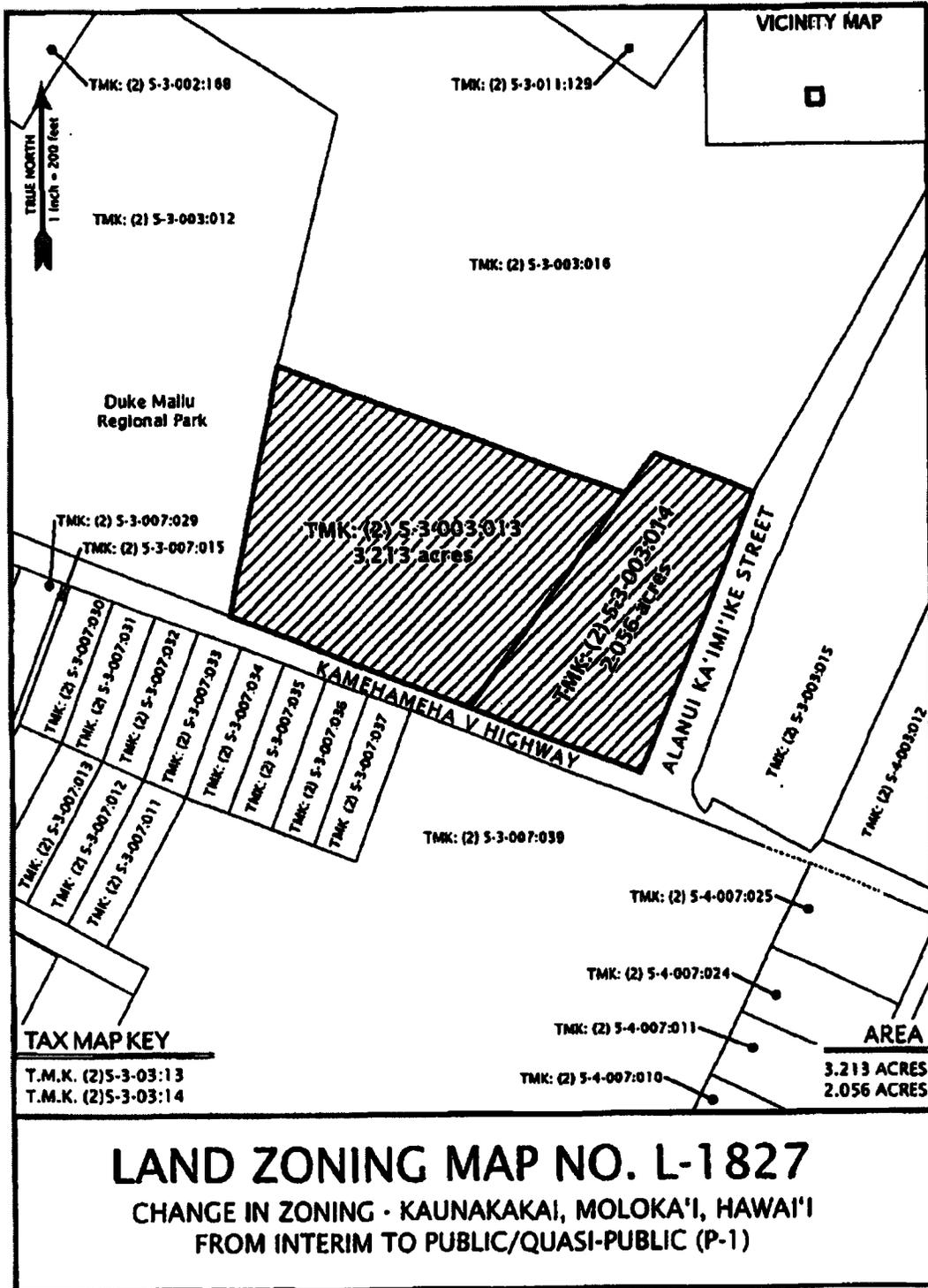


March 22, 2019
Honolulu, Hawaii


Alden S. Kajioka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court Certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003: 014

EXHIBIT "B"



LAND ZONING MAP NO. L-1827
 CHANGE IN ZONING - KAUNAKAKAI, MOLOKA'I, HAWAII'
 FROM INTERIM TO PUBLIC/QUASI-PUBLIC (P-1)

Exhibit "C"

1. Defined terms. All terms defined in the Unilateral Agreement to which this Exhibit 3 is attached shall be applicable to the Conditions of Zoning contained in this Exhibit 3 unless otherwise specifically defined herein.

2. Authorized use. The Property may only be used for churches; community centers; specialized education and general education; facilities for non-profit organizations; government buildings and facilities; kindergartens, elementary schools, middle schools, high schools, colleges, universities, and libraries, nursery schools and day care centers that are part of college programs and in support of college students, faculty and staff; private parking lots or structures serving public purposes; public facilities or public uses; quasi-public uses or quasi-public facilities; public parking lots or structures; and water treatment facilities.

3. Sea-level-rise inundation. If the Property owner, who is the University of Hawai'i ("**University**"), determines or the County of Maui orders that the Property be vacated because of sea-level-rise inundation, the University may, with concurrence from the County of Maui Planning Department or such successor agency ("**County Department**") elect to perform either, both or some combination of the following (collectively the "**Elected Actions**"): (a) remove and dispose, at no cost to the County of Maui, all or a portion of the University's buildings and structures comprising the Molokai Education Center expansion (collectively the "**Expansion Facilities**") from the Property in compliance with applicable state and county laws, statutes, and ordinances (with the University's removal obligation subject to the University obtaining sufficient authorized funding through appropriation from the Hawai'i State Legislature and an allotment from the Governor of Hawai'i to perform and/or complete said removal) and (b) leave all or a portion of the Expansion Facilities in place as part of University research projects, including, without limitation, studies evaluating: (i) coastal environmental impacts resulting from sea-level-rise inundation and other climate change related impacts and (ii) the feasibility and effectiveness of underwater urban structures serving as marine and reef like environments and promoting the growth of fish, mammals and other marine life in the area, provided that the University shall not be required to maintain a reserve toward or set aside any funding in advance of implementing either, both or some combination of the Elected Actions.

4. Other Owner obligations. If the Property owner is a person or entity other than the University or a State of Hawaii governmental entity ("**Other Owner**") and the County of Maui orders that the Property be vacated because of sea-level-rise inundation, the Other Owner will, within six (6) months after written notice from the County of Maui and prior to being covered by sea level-rise inundation, remove and dispose, at no cost to the County of Maui, the

portion of the buildings and structures covered by the County of Maui order from the Property in compliance with applicable state and county laws, statutes, and ordinances.

hlu:misc:011abill03_conditions:pmg

EXHIBIT "D"

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: _____

(Including exhibits, notary certification pages, and all other components)

Affects Tax Map Keys (Maui) (2) 5-3-003:013 and (2) 5-3-003:014

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, referred to as "**Declaration**" or "**Unilateral Agreement**," is made this, 12TH day of April, 2024, by the following "Declarant," who is the owner of real property located at 375 Kamehameha V Highway, Kaunakakai, Hawaii, referred to as "**the Property**," comprised of 5.27 acres, and identified for real property tax purposes as Tax Map Keys: (2) 5-3-003:013 and (2) 5-3-003:014.

The Declarant is the University of Hawai'i, whose principal address is at 2444 Dole Street, Bachman Hall, Honolulu, Hawaii, and whose authorized contact person is the University of Hawai'i Vice President for Budget and Finance/Chief Financial Officer, who is currently Kalbert K. Young, and any of his successors.

WITNESSETH:

WHEREAS, the Council is considering the establishment of zoning for the Property, described in Exhibit "1" and more particularly identified in Exhibit "2," Land Zoning Map L-1827; and

WHEREAS, the Housing and Land Use Committee recommended passage on first reading of a Conditional Zoning bill in accordance with Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this Unilateral Agreement in accordance with Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. In accordance with Maui County Code. That this Declaration is made in accordance with the provisions of Section 19.510.050, Maui County Code, relating to Conditional Zoning;

2. Binding until Maui County written release. That until written release by the County of Maui, (a) the Property, and all its parts, are held subject to this Declaration's covenants, conditions, and restrictions, which are effective as to and run with 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 to the Property by the Declarant, the County of Maui, or any successor or assign; (b) the acquisition of any right, title or interest *in* or with respect to the Property by any person or entity constitute acceptance of all of the covenants, conditions, and restrictions of this Declaration by the person or entity; and (c) upon any transfer of any right, title, or interest in or with respect to the Property, the transferee assumes, is bound by, and is obligated to observe and perform all of the covenants, conditions, and restrictions of this Declaration;

3. Running with the Land. That this Declaration and all of its covenants, conditions, and restrictions contained are effective as to and run with the land in perpetuity, or until the Declarant notifies the County Department of Planning that any of the covenants, conditions, and restrictions are satisfied by the Declarant, and the Department verifies the satisfaction and provides a written release of the covenant, condition, or restriction;

4. University of Hawaii as Declarant. That the term "Declarant" and any pronoun in reference to it, wherever used in this Declaration, means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and includes any corporation or any other entity, and means and includes the University of Hawai'i, the state university and a body corporate of the State of Hawai'i, as Declarant and the Declarant's successors, and assigns;

5. Effective as of date Conditional Zoning ordinance approved. That this Declaration is fully effective on the effective date of the Conditional Zoning ordinance approving the establishment of a Change in Zoning from the Interim District to the P-1 Public/Quasi-Public District for the Property;

6. Develop consistent with Conditional Zoning conditions. That the Declarant agrees to develop the Property in conformance with the conditions stated in Exhibit 3 and in the Conditional Zoning ordinance;

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

8. Conditions enforceable by County of Maui. AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County of Maui, the conditions imposed in this Declaration run with the land identified in this Declaration and bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Property. The Declarant further understands and agrees that the County of Maui has the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, with the understanding the Declarant or its successors and assigns may at any time file a petition with the Council or the Department for the removal of the conditions and termination of this Unilateral Agreement, which will be processed in the same manner as petitions for Change in Zoning.

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

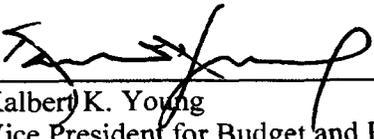
Any persons signing this Unilateral Agreement represent that they are duly authorized and have legal capacity to execute and deliver this Unilateral Agreement. Each party represents to the other that the execution and delivery of this Unilateral Agreement and the performance of the party's obligations have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on the party and enforceable in accordance with its terms.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year indicated on the following notary public certification pages.

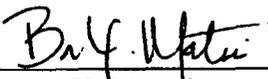
DECLARANT:

University of Hawaii

By: 
Kalbert K. Young
Vice President for Budget and Finance/Chief
Financial Officer

Approved as to Form

Office of University General Counsel

By: 
Bruce Y. Matsui
Associate General Counsel

Approved as to Form and Legality

By: 
Print name: Michael J. Hopper
Deputy Corporation Counsel

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 12th day of April 2024, before me personally appeared KALBERT K. YOUNG, to me personally known, who being by me duly sworn, did say that he is the Vice President for Budget and Finance/Chief Financial Officer of the UNIVERSITY OF HAWAII, the state university and a body corporate of the State of Hawai'i, and that said instrument was signed on behalf of said UNIVERSITY OF HAWAII by authority of its Board of Regents, and said KALBERT K. YOUNG, as said Vice President for Budget and Finance/Chief Financial Officer, acknowledged said instrument to be the free act and deed of said University of Hawai'i.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Denise M. Miura
Notary Public, State of HAWAII
Print Name: Denise M. Miura
My Commission Expires: MAR 17 2026

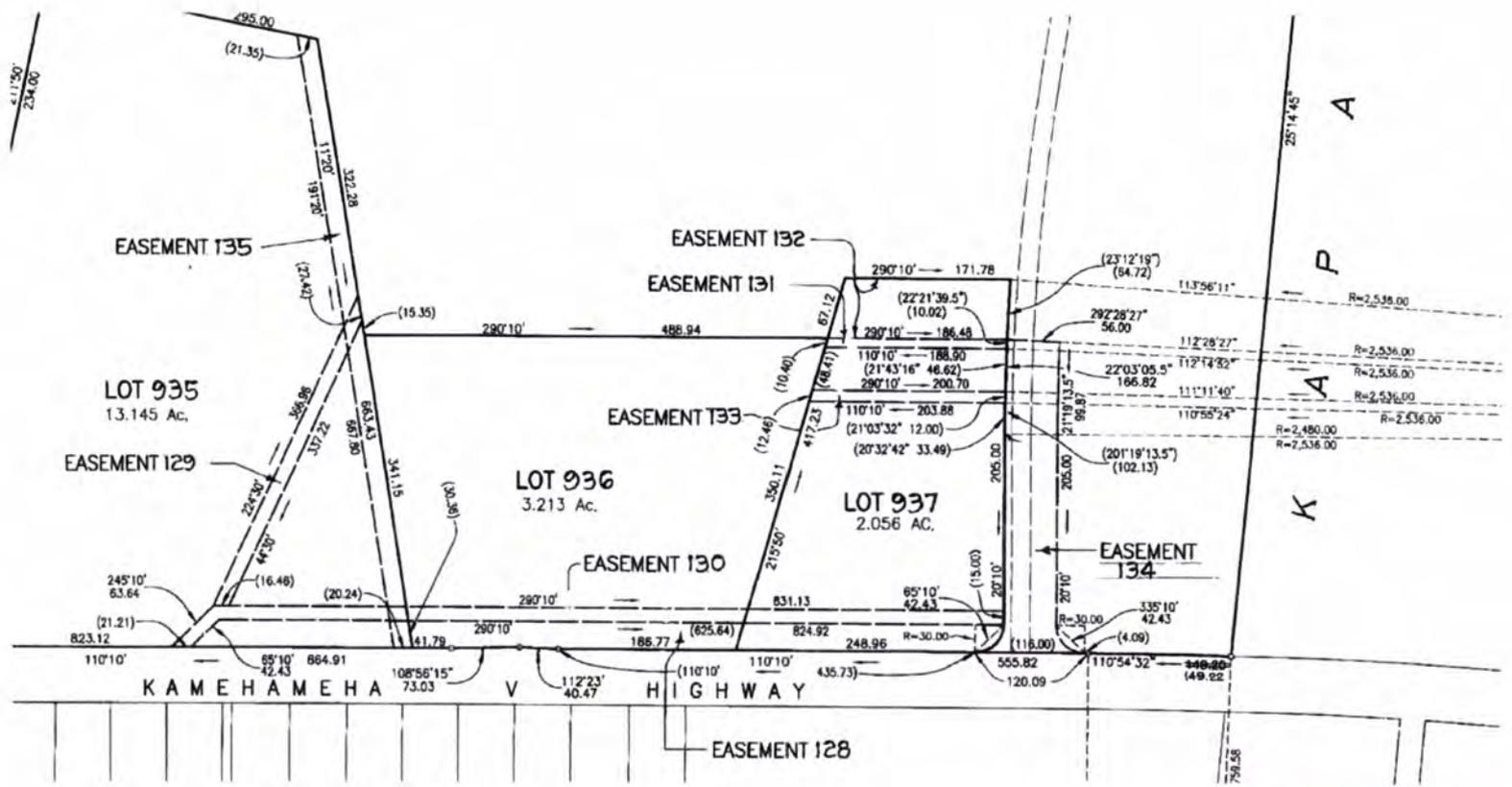
NOTARY PUBLIC CERTIFICATION	
Doc Date: <u>Undated at time of notarization.</u>	# Pages: <u>15</u>
Notary Name: <u>Denise M. Miura</u>	Judicial Circuit: <u>1st</u>
Document Description: <u>unilateral Agreement and Declaration for conditional zoning (375 Kamehameha V Highway)</u>	
Notary Signature: <u>Denise M. Miura</u>	
Date: <u>APR 12 2024</u>	



EXHIBIT "1"

Description of the Property

Legal Meets and Bounds Lot 936 and Lot 937



LAND COURT APPLICATION 632
 (MAP 98)

LOT 936

Being Lot 936 as shown on Map 98 of Land Court Application 632.

Land situated at Kaunakakai, Molokai, Hawaii

Beginning at the Southwest corner of this piece of land, being also the Southeast corner of Lot 935 as shown on Map 98 of Land Court Application 632, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 15,688.66 feet South and 648.84 feet West and running by azimuths measured clockwise from true South:

- | | | | |
|----|--------------|-------------|--|
| 1. | 191° 20' | 341.15 feet | along Lot 935 as shown on Map 98 of Land Court Application 632; |
| 2. | 290° 10' | 488.94 feet | along Lot 938-A as shown on Map 104 of Land Court Application 632; |
| 3. | 395° 50' | 350.11 feet | along Lot 937 as shown on Map 98 of Land Court Application 632; |
| 4. | 110° 10' | 186.77 feet | along the North side of Kamehameha V Highway; |
| 5. | 112° 23' | 40.47 feet | along the same; |
| 6. | 108° 56' 15" | 73.03 feet | along the same; |
| 7. | 110° 10' | 41.79 feet | along same, to the point of beginning and containing an area of 3.213 acres. |

Subject, however, to Easements 128 and 130, as shown on Map 98 of Land Court Application 632.



March 22, 2019
Honolulu, Hawaii

A handwritten signature in black ink, appearing to read "Alden S. Kajioka", written over a horizontal line.

Alden S. Kajioka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003: 013

LOT 937

Being Lot 937 as shown on Map 98 of Land Court Application 632.

Land situated at Kaunakakai, Molokai, Hawaii

Beginning at the Southwest corner of this piece of land, being also the Southeast corner of Lot 936 as shown on Map 98 of Land Court Application 632, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 15,806.57 feet South and 327.80 feet West and running by azimuths measured clockwise from true South:

1. 215° 50' 417.23 feet along Lot 936 and 938 as shown on Map 98 of Land Court Application 632;
2. 290° 10' 171.78 feet along the same;
3. Thence, along Westerly side of Alanui' Kaimile Street, on a curve to the left with a radius of 2,536.00 feet, the chord azimuth and distance being:
22° 03' 05.5" 166.82 feet;
4. 20° 10' 205.00 feet along the same;
5. Thence, along same, on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being:
65° 10' 42.43 feet;
6. 110° 10' 248.96 feet along the North side of Kamehameha V Highway, to the point of beginning and containing an area of 2.056 acres.

Subject, however, to Easements 128, 130, 131, 132 and 133 as shown on Map 98 of
Land Court Application 632



March 22, 2019
Honolulu, Hawaii

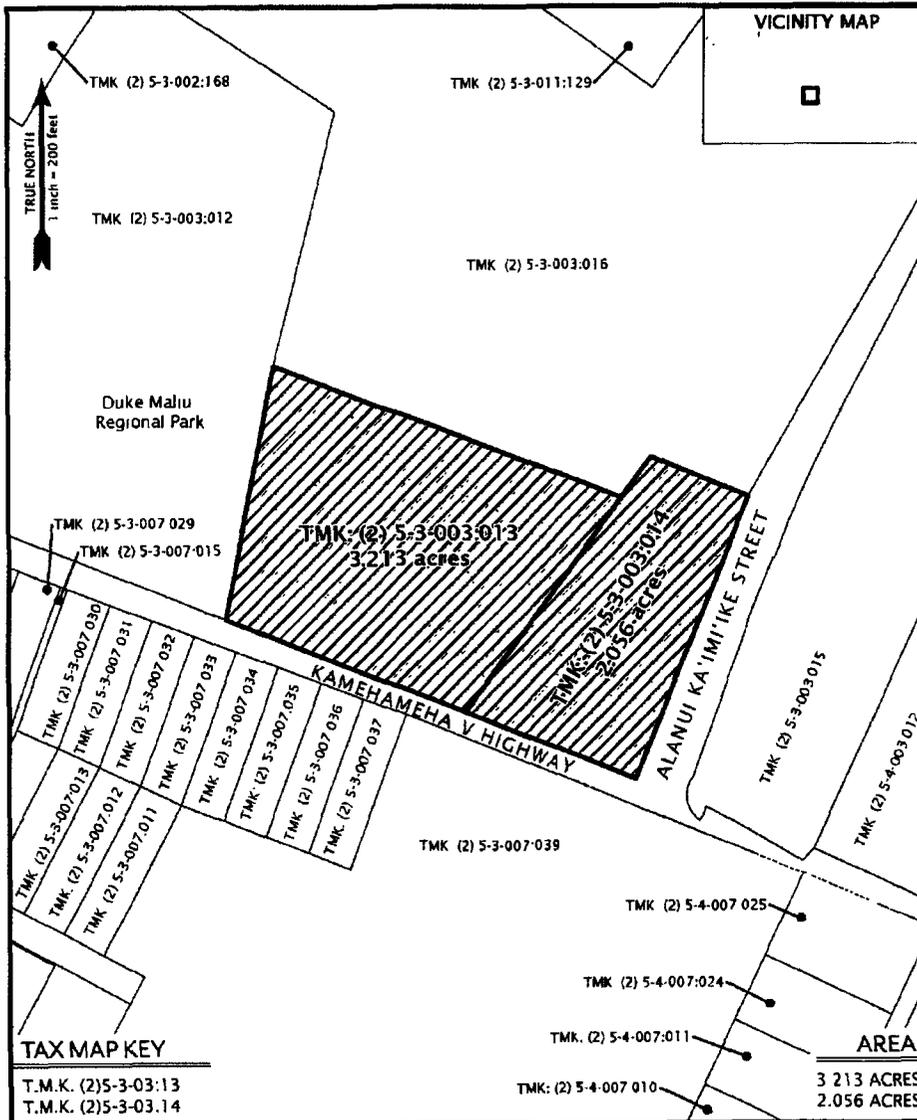
A handwritten signature in black ink, appearing to read "Alden S. Kajioka", written over a horizontal line.

Alden S. Kajioka
Licensed Professional Land Surveyor
Certificate Number 6605
Land Court Certificate No. 248
License Expires April 30, 2020

Tax Map Key: (2) 5-3-003: 014

EXHIBIT "2"

LAND ZONING MAP L-1827



LAND ZONING MAP NO. L-1827

CHANGE IN ZONING - KAUNAKAKAI, MOLOKA'I, HAWAII
FROM INTERIM TO PUBLIC/QUASI-PUBLIC (P-1)

EXHIBIT "3"

CONDITIONS OF ZONING

1. Defined terms. All terms defined in the Unilateral Agreement to which this Exhibit 3 is attached shall be applicable to the Conditions of Zoning contained in this Exhibit 3 unless otherwise specifically defined herein.
2. Authorized use. The Property may only be used for churches; community centers; specialized education and general education; facilities for non-profit organizations; government buildings and facilities; kindergartens, elementary schools, middle schools, high schools, colleges, universities, and libraries, nursery schools and day care centers that are part of college programs and in support of college students, faculty and staff; private parking lots or structures serving public purposes; public facilities or public uses; quasi-public uses or quasi-public facilities; public parking lots or structures; and water treatment facilities.
3. Sea-level-rise inundation. If the Property owner, who is the University of Hawai'i ("**University**"), determines or the County of Maui orders that the Property be vacated because of sea-level-rise inundation, the University may, with concurrence from the County of Maui Planning Department or such successor agency ("**County Department**") elect to perform either, both or some combination of the following (collectively the "**Elected Actions**"): (a) remove and dispose, at no cost to the County of Maui, all or a portion of the University's buildings and structures comprising the Molokai Education Center expansion (collectively the "**Expansion Facilities**") from the Property in compliance with applicable state and county laws, statutes, and ordinances (with the University's removal obligation subject to the University obtaining sufficient authorized funding through appropriation from the Hawai'i State Legislature and an allotment from the Governor of Hawai'i to perform and/or complete said removal) and (b) leave all or a portion of the Expansion Facilities in place as part of University research projects, including, without limitation, studies evaluating: (i) coastal environmental impacts resulting from sea-level-rise inundation and other climate change related impacts and (ii) the feasibility and effectiveness of underwater urban structures serving as marine and reef like environments and promoting the growth of fish, mammals and other marine life in the area, provided that the University shall not be required to maintain a reserve toward or set aside any funding in advance of implementing either, both or some combination of the Elected Actions.
4. Other Owner obligations. If the Property owner is a person or entity other than the University or a State of Hawaii governmental entity ("**Other Owner**") and the County of Maui orders that the Property be vacated because of sea-level-rise inundation, the Other Owner will, within six (6) months after written notice from the County of Maui and prior to being covered by sea level-rise inundation, remove and dispose, at no cost to the County of Maui, the portion of the buildings and structures covered by the County of Maui order from the Property in compliance with applicable state and county laws, statutes, and ordinances.