

REQUEST FOR LEGAL SERVICES

Date: February 22, 2018
From: Robert Carroll, Chair
Land Use Committee

TRANSMITTAL

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

Subject: DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN AMENDMENT, AND CHANGE IN ZONING FOR SEABURY HALL (MAKAWAO) (LU-51)

Background Data: Please review and, if appropriate, approve as to form and legality, the attached unilateral agreements (three originals). Return of all three originals is required. Thank you.

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

Requestor's signature <i>for</i> <u>Robert Carroll</u> Robert Carroll	Contact Person <u>Carla Nakata or Alec Wagner</u> (Telephone Extension: <u>7659 or 7662, respectively</u>)
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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): February 28, 2018, 10 a.m.
REASON: To submit for posting on March 2, 2018, for the March 9, 2018 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)

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 Keys: (2) 2-4-008:041

Total No. of Pages: 11

(2) 2-4-008:001 (por.)

UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 20th day of February, 2018, by SEABURY HALL, a Hawaii non-profit corporation, whose principal place of business and mailing address is 480 Olinda Road, Makawao, Hawaii 96768, hereinafter referred to as "Declarant", and who is the owner of that certain land located at Maluhia, Makawao, Maui, Hawaii, comprised of approximately 14.950 acres and identified for real property tax purposes by Tax Map Key Nos. (2) 2-4-008:041 and (2) 2-4-008:001 (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 establishment of zoning for the Property, comprised of approximately 14.950 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-1090 which is attached hereto as Exhibit "2" and made a part hereof; and

WHEREAS, the Council recommends through its 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 the 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 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 P-1 Public/Quasi-Public District zoning and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawaii;

6. 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.

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

DECLARANT:

SEABURY HALL

By



R. CLAY SUTHERLAND

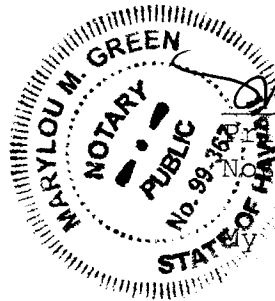
President of the Seabury Hall
Board of Trustees

APPROVED AS TO FORM
AND LEGALITY:

DAVID GALAZIN
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On February 20, 2018, before me personally appeared R. CLAY SUTHERLAND, 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 for Conditional Zoning, dated February 20, 2018, 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).



Marylou M. Green
Name: Marylou M. Green
Notary Public, State of Hawaii.

commission expires: July 31, 2021

EXHIBIT "1"

Description of Tax Map Key (2) 2-4-08:41 and Portion of 01

Land situated on the westerly side of Olinda Road, the northerly side of Hanamu Road and the easterly side of Meha Road at Maluhia, Makawao, Maui, Hawaii.

Being portions of Grant 327 to Aneru and Grant 102 to Uwe

Beginning at a point at the southwesterly corner of this land, being also southeasterly corner of Lot 1B of Seabury Hall Subdivision, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PIIHOLO" being: 5,022.97 feet South and 5,784.03 feet West and running by azimuths measured clockwise from True South:

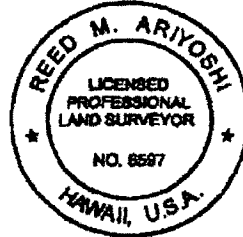
1. 224° 52' 265.96 feet along Lot 1B of Seabury Hall Subdivision, being also along the remainder of Grant 102 to Uwe to a point;
2. 140° 00' 320.00 feet along Lot 1B of Seabury Hall Subdivision being also along the remainders of Grant 102 to Uwe and Grant 327 to Aneru to a point;
3. 127° 15' 30" 320.00 feet along Lot 1B of Seabury Hall Subdivision, being also along the remainder of Grant 327 to Aneru to a point;
4. 90° 30' 125.00 feet along same to a point;
5. 34° 51' 118.17 feet along same to a point;
6. 124° 51' 176.14 feet along the remainder of Lot 1A of Seabury Hall Subdivision, being also along the remainder of Grant 327 to Aneru to a point;
7. 214° 51' 123.52 feet along Lot B of Marciel Subdivision, being also along Grant 322 to Keakaikawai to a point;

8. 270° 30' 389.10 feet along the remainder of Lot 1A of Seabury Hall Subdivision, being also along the remainder of Grant 327 to Aneru to a point;
9. 307° 15' 30" 503.42 feet along the remainder of Lot 1A of Seabury Hall Subdivision, being also along the remainders of Grant 327 to Aneru and Grant 102 to Uwe to a point;
10. 206° 02' 113.96 feet along remainder of Lot 1A of Seabury Hall Subdivision and along Lot 1A of Seabury Hall Subdivision, being also along the remainder of Grant 102 to Uwe to a point;
11. 178° 08' 285.66 feet along Lot 1A of Seabury Hall Subdivision, being also along the remainders of Grant 102 to Uwe and Grant 327 to Aneru to a point;
12. 298° 25' 29.47 feet along Lot 6-A-1 of Asa F. Baldwin Subdivision, being also along the remainder of Grant 327 to Aneru to a point;
13. Thence along Lot 6-A-1 of Asa F. Baldwin Subdivision, being also along the remainders of Grant 327 to Aneru and Grant 102 to Uwe on a curve to the left, having a radius of 187.50 feet, the chord azimuth and distance being:
270° 23' 176.24 feet to a point;
14. 242° 21' 169.25 feet along Lot 6-A-1 of Asa F. Baldwin Subdivision, being also along the remainder of Grant 102 to Uwe to a point;

15. Thence along Lot 6-A-4 of Asa F. Baldwin Subdivision, being also along the remainder of Grant 102 to Uwe on a curve to the right, having a radius of 30.00 feet, the chord azimuth and distance being:
281° 20' 30" 37.75 feet to a point;
16. 320° 20' 97.36 feet along same to a point;
17. 46° 00' 378.91 feet along Lot 7-A of Asa F. Baldwin Subdivision, being also along the remainder of Grant 102 to Uwe to a point;
18. 314° 50' 247.59 feet along same to a point;
19. 236° 00' 154.03 feet along same to a point;
20. 217° 00' 206.38 feet along same to a point;
21. 320° 20' 178.07 feet along Lot 6-A-5 of Asa F. Baldwin Subdivision, being also along the remainder of Grant 102 to Uwe to a point;
22. Thence along same on a curve to the right, having a radius of 30.00 feet, the chord azimuth and distance being:
1° 31' 30" 39.51 feet to a point;
23. 42° 43' 401.21 feet along same to a point;
24. 126° 07' 50" 1.52 feet along the remainder of Grant 102 to Uwe to a point;
25. 43° 05' 586.04 feet along Lot 1C of Seabury Hall Subdivision, being also along the remainder of Grant 102 to Uwe to a point;
26. Thence along same on a curve to the right, having a radius of 30.00 feet, the chord azimuth and distance being:
88° 58' 30" 43.08 feet to a point;

27. 134° 52'

413.72 feet along same to the point of beginning and containing an Area of 14.950 Acres.



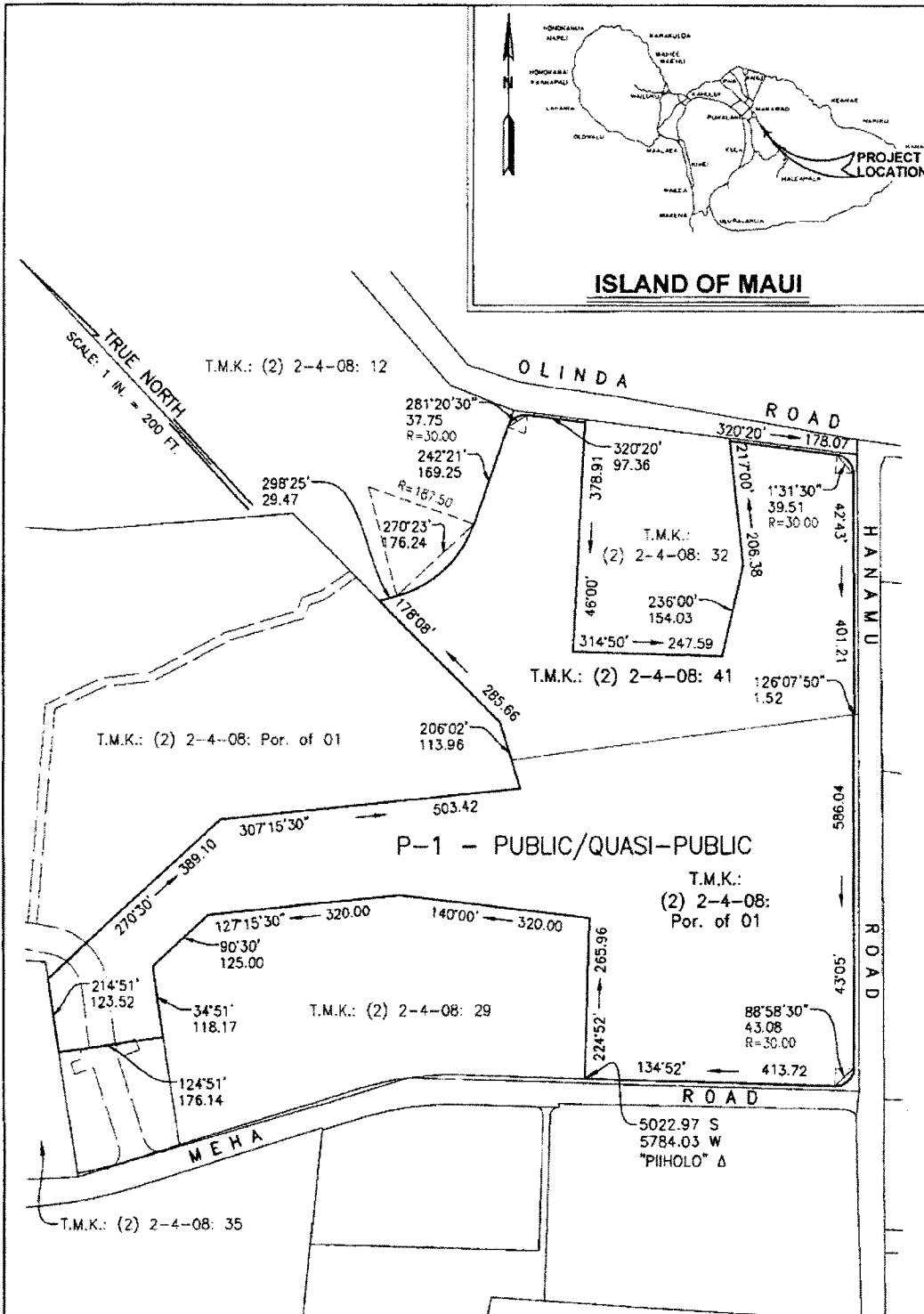
WARREN S. UNEMORI ENGINEERING, INC.
Wells Street Professional Center
2145 Wells Street, Suite 403
Wailuku, Maui, Hawaii 96793
October 20, 2016

BY: Reed M. Ariyoshi 04/30/18 Exp.
Licensed Professional Land Surveyor
Certificate No. 6597

Note: This metes and bounds description has been prepared for change in Zoning, Land Use District Boundary Amendment and Community Plan Amendment purposes only.

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EXHIBIT "2"



V:\Proj\data\6proj\16063\dwg\maps\ZONE AREA-00.dwg

LAND: T.M.K.: (2) 2-4-08 : 41 & POR. OF 01 AREA: TOTAL AREA: 14.950 ACRES

LAND ZONING MAP NO. L-1090
 CHANGE IN ZONING - MAKAWAO, MAUI, HAWAII
 FROM AGRICULTURAL TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT

EXHIBIT "3"

Condition of Zoning

1. That Seabury Hall shall maintain a 50-foot building setback along the Meha Road boundary of the property identified for real property tax purposes as Tax Map Key (2) 2-4-008:001.