

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

January 15, 2010

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on November 4, 2009, makes reference to County Communication No. 08-291, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT PUKALANI, MAUI, HAWAII". The purpose of the proposed bill is to grant a request from Tam Yau Estates, LLC (Tam Yau) for a District Boundary Amendment from Agricultural to Urban for approximately 4.659 acres, to allow for the development of a 16-lot, single-family residential subdivision known as the Tam Yau Estates Subdivision in Pukalani, Maui, Hawaii (TMK: (2) 2-3-43:051).

Your Committee notes that the existing Community Plan designation for the property is Single Family, while the existing zoning is R-3 Residential District. The property is currently an undeveloped field and is located on Makani Road, approximately 200 feet south of the Haleakala Bypass in Pukalani.

According to Christopher Hart, Chris Hart & Partners, Inc., consultant for Tam Yau, the lots would be accessed from Makani Road and would range in size from approximately 10,000 to 15,000 square feet. Tam Yau would construct a two-lane road to access each lot, ending in a cul-de-sac. He also informed your Committee that, in April 2008, the State Historic Preservation Division (SHPD) accepted the Archaeological Assessment Report prepared in 2006 for the property.

Your Committee notes that the Maui Planning Commission recommended that the District Boundary Amendment be granted, subject to three conditions. The proposed conditions would require that work cease and SHPD be contacted if historic resources are identified during routine construction activities; that Tam Yau provide a public easement for pedestrian and bicycle access; and that a drainage system be implemented that would accommodate a voluntary reduction of at least 10 percent runoff from predevelopment drainage conditions.

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Robert Sutor, Manager, Tam Yau, advised your Committee that on-site monitoring by an archaeologist would not be required because of the findings presented. Your Committee expressed concerns that proper steps be taken to ensure that work was proceeding in an acceptable manner during excavation. Your Committee recommended that a new condition be added to require that an archaeological monitor be on-site to monitor subsurface work.

Your Committee discussed the need to clarify the intent of the condition requiring a pedestrian and bicycle access easement, to specify the time frame for providing the easement, the width of the easement, and its location. The Deputy Director of Public Works informed your Committee that a ten-foot-wide easement will better enable the County to access and maintain the easement with County equipment. Your Committee recommended that the condition be revised accordingly.

Your Committee further recommended that three new conditions be added. First, your Committee recommended that construction activities be limited to normal daylight hours in order to minimize construction impacts to surrounding neighbors. Second, although the project is exempt from the requirements of Chapter 2.96, Maui County Code (the Residential Workforce Housing Policy), your Committee recommended, with the landowner's agreement, that Tam Yau work with the Department of Housing and Human Concerns to ensure that 25 percent of the lots, or four lots, shall be affordable for those households whose income does not exceed 160 percent of the median family income, as determined by the United States Department of Housing and Urban Development, for the County of Maui. Finally, your Committee recommended that a condition be added requiring an annual compliance report.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Baisa, Vice-Chair Molina, and members Johnson, Kaho`ohalahala, Mateo, Medeiros, and Nishiki voted "aye". Committee members Pontanilla and Victorino were excused.

Your Committee is in receipt of an agreement entitled "Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment" executed by Tam Yau Estates, LLC. Your Committee is also in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions and the unilateral agreement.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

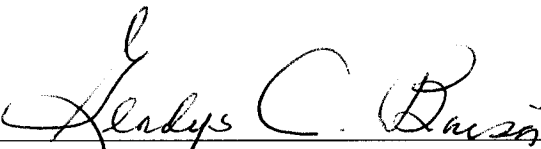
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Committee
Report No. _____

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2010), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT PUKALANI, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That the County Clerk RECORD the "Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment"; and
3. That County Communication No. 08-291 be FILED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



GLADYS C. BAISA, Chair

ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE
DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY
SITUATED AT PUKALANI, MAUI, HAWAII

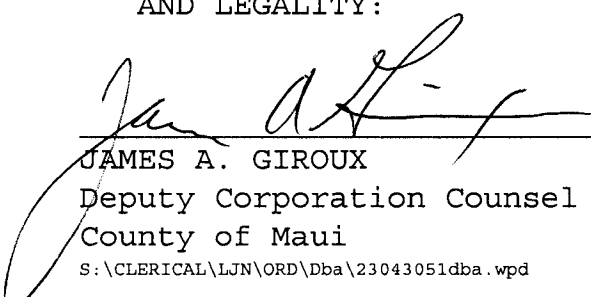
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 205-3.1, Hawaii Revised Statutes, and Chapter 19.68, Maui County Code, the State Land Use District classification is reclassified from the Agricultural District to the Urban District for that certain parcel of land located at Pukalani, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2)2-3-043:051, comprising approximately 4.659 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in District Boundary Amendment Map No. DB-626, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 2. Pursuant to Section 19.68.040, Maui County Code, the State Land Use District classification granted by this ordinance is subject to the conditions set forth in Exhibit "B", attached hereto and made a part hereof, and the Unilateral Agreement and Declaration for Conditional zoning, attached hereto and made a part hereof as Exhibit "C".

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

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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DESCRIPTION
PORTION OF GRANT 1468 TO DANIEL T. CONDE
 BEING PARCEL 51 OF TAX MAP KEY: (2) 2-3-043

All of that certain parcel of land, being a portion of Grant 1468 to Daniel T. Conde, being Parcel 51 of Tax Map Key: (2) 2-3-043, situated at Kailua, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a chiseled cross on concrete (found) at the East corner of this parcel of land, on the Southwesterly boundary of Parcel 63 of Tax Map Key:(2) 2-3-009, said pipe also being the North corner of Parcel 44 of Tax Map Key:(2) 2-3-044, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU PANE" being:

13,040.15 feet North
 6,165.79 feet West

and running by azimuths measured clockwise from true South:

1. 38° 45' 30" 220.37 feet along said Parcel 44 of Tax Map Key:(2) 2-3-044, along the remainder of said Grant 1468 to Daniel T. Conde to a 1/4-inch pipe (found) on the Northerly boundary of Grant 963 to Kahainapule, said pipe also being the North corner of Parcel 43 of said Tax Map Key:(2) 2-3-044 and the East corner of Lot 9 of the Makani Subdivision, Unit III, File Plan Number 961;
2. 124° 08' 10" 799.20 feet along Lots 9, 8, 7, and 6 of said Makani Subdivision, Unit III, File Plan Number 961, along Lots 37, 38, 39, and 40, of the Makani Subdivision, Units I and II, File Plan Number 899, along said Grant 963 to Kahainapule to a 1/4-inch pipe (set) on the Southerly boundary of the Makani Road right-of-way;
3. 245° 52' 53" 397.17 feet along said Southerly boundary of the Makani Road right-of-way to a 1/4-inch pipe (set);
4. 315° 12' 52" 10.84 feet along said Southerly boundary of the Makani Road right-of-way (Haleakala Highway FAP NO. 37C-01-90) to a 1/4-inch pipe (set);

5. 247° 57' 27" 0.54 feet along same to a 1/2-inch pipe (found) with yellow plastic cap marked "RLS 2715, RLS 5983" at the Westerly corner of said Parcel 63 of Tax Map Key:(2) 2-3-009;
6. 315° 10' 27" 608.30 feet along said Parcel 63 of Tax Map Key:(2) 2-3-009, along the remainder of said Grant 1468 to Daniel T. Conde to the point of beginning and containing an area of 4.659 Acres, more or less.

Prepared by:

CARL R. MUSTO
LAND SURVEYING, LLC



This description was prepared from an actual survey on the ground performed by me or under my supervision.

Carl R. Musto
CARL R. MUSTO

Licensed Professional Land
Surveyor Certificate No. 11443

EXHIBIT "B"

CONDITIONS

1. That, in the event historic resources, including human skeletal remains, are identified during routine construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division shall be contacted immediately.
2. That the project shall be required to have an archaeological monitor on-site to monitor subsurface work.
3. That prior to final subdivision approval, Tam Yau Estates, LLC, will provide a public easement, a minimum of ten (10) feet wide, for pedestrian and bicycle access through the project cul-de-sac to the southeastern property line. The County's plan is to eventually link the subdivision to neighboring properties in order to provide connection between Makani Road and Makawao Avenue.
4. That Tam Yau Estates, LLC, will implement a drainage system for approval by the Department of Public Works that accommodates the voluntary reduction of a minimum of ten percent runoff from the pre-development drainage conditions.
5. That Tam Yau Estates, LLC, shall limit construction activities to normal daylight hours in order to minimize construction impacts to surrounding neighbors.
6. That Tam Yau Estates, LLC, shall work with the Department of Housing and Human Concerns to ensure that 25 percent of the lots, or four lots, shall be affordable for those households whose income does not exceed 160 percent of the median family income, as determined by the United States Department of Housing and Urban Development, for the County of Maui.
7. That Tam Yau Estates, LLC, shall provide an annual compliance report to the Department of Planning and the Council, commencing within one year of the effective date of the ordinance, and a final compliance report shall be provided to the Department of Planning and the Council prior to final subdivision approval.

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: 7

Affects Tax Map Key (Maui) (2) 2-3-043:051

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

THIS INDENTURE, made this 31 day of December, 2009, by Tam Yau Estates, LLC (a Hawai'i limited liability company) whose principal place of business is located in Kihei, Maui, Hawai'i and whose mailing address is 4955 Makena Road, D201, Kihei, Hawaii 96753, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Pukalani, Maui, Hawai'i, comprised of approximately 4.659 acres, and identified for real property tax purposes by Tax Map Key No(s). (2) 2-3-043:051, hereinafter referred to as "PARCEL" (or "PROPERTY").

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i, hereinafter referred to as "Council", is considering the Declarant's Petition ("Petition") for a State land use district boundary amendment for the Parcel, comprising approximately 4.659 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 Use District Boundary Amendment Map No. DB-626, which is on file in the Office of the County Clerk of the County of Maui; and

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. _____, that said 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 Parcel, 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 Parcel, 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 Parcel 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 Parcel the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration;

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

4. That the term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That the Declaration shall become fully effective on the effective date of the ordinance approving the establishment of the Urban State land use district boundary classification and that 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 Parcel in conformance with the conditions set forth in Exhibit "2", 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.

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

DECLARANT:

Tam Yau Estates, LLC

By 

Robert E. Sutor
Its Manager

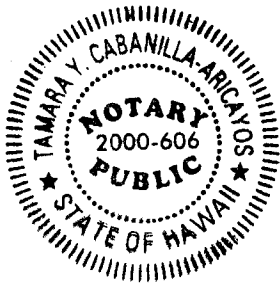
APPROVED AS TO FORM AND LEGALITY:



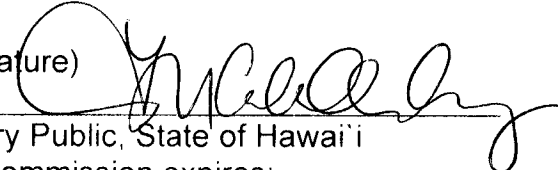
JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 4th day of ~~December, 2009~~ ^{January 2010}, before me personally appeared Robert E. Sutor, to me personally known who being by me duly sworn, did say that he is the Manager of Tam Yau Estates, LLC (and that said instrument was signed and sealed on behalf of said organization/corporation) or (by authority of its Board of Directors, and the said Office acknowledged said instrument to be the free act and deed of said organization/corporation.)



(signature)


Notary Public, State of Hawaii
My Commission expires:

Tamara Y. Cabanilla-Aricayos
Expiration Date: February 22, 2013

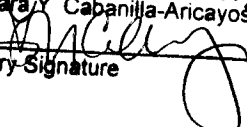
NOTARY CERTIFICATE, STATE OF HAWAII

Doc. Description/ID: Unilateral Agreement &

Declaration of Conditions For State Land Use District Boundary Ament

Doc. Date: 1/4/2010 Pages: 7

Tamara Y. Cabanilla-Aricayos dm Circuit

Notary Signature 

1-4-2010
Cert. Date

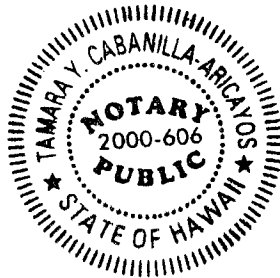


EXHIBIT 1
PROPERTY DESCRIPTION

DESCRIPTION
**PORTION OF GRANT 1468 TO DANIEL T. CONDE
BEING PARCEL 51 OF TAX MAP KEY: (2) 2-3-043**

All of that certain parcel of land, being a portion of Grant 1468 to Daniel T. Conde, being Parcel 51 of Tax Map Key: (2) 2-3-043, situated at Kailua, Kula, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

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13,040.15 feet North
6,165.79 feet West

and running by azimuths measured clockwise from true South:

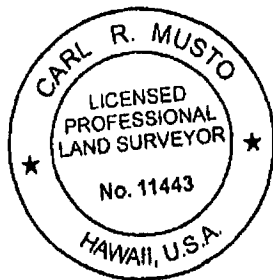
1. 38° 45' 30" 220.37 feet along said Parcel 44 of Tax Map Key:(2) 2-3-044, along the remainder of said Grant 1468 to Daniel T. Conde to a ½-inch pipe (found) on the Northerly boundary of Grant 963 to Kahainapule, said pipe also being the North corner of Parcel 43 of said Tax Map Key:(2) 2-3-044 and the East corner of Lot 9 of the Makani Subdivision, Unit III, File Plan Number 961;
2. 124° 08' 10" 799.20 feet along Lots 9, 8, 7, and 6 of said Makani Subdivision, Unit III, File Plan Number 961, along Lots 37, 38, 39, and 40, of the Makani Subdivision, Units I and II, File Plan Number 899, along said Grant 963 to Kahainapule to a ¾-inch pipe (set) on the Southerly boundary of the Makani Road right-of-way;
3. 245° 52' 53" 397.17 feet along said Southerly boundary of the Makani Road right-of-way to a ¾-inch pipe (set);
4. 315° 12' 52" 10.84 feet along said Southerly boundary of the Makani Road right-of-way (Haleakala Highway FAP NO. 37C-01-90) to a ¾-inch pipe (set);

EXHIBIT 1 (continued)
PROPERTY DESCRIPTION

5. 247° 57' 27" 0.54 feet along same to a ¼-inch pipe (found) with yellow plastic cap marked "RLS 2715, RLS 5983" at the Westerly corner of said Parcel 63 of Tax Map Key:(2) 2-3-009;
6. 315° 10' 27" 608.30 feet along said Parcel 63 of Tax Map Key:(2) 2-3-009, along the remainder of said Grant 1468 to Daniel T. Conde to the point of beginning and containing an area of 4.659 Acres, more or less.

Prepared by:

CARL R. MUSTO
LAND SURVEYING, LLC



This description was prepared from an actual survey on the ground performed by me or under my supervision.

Carl R. Musto
CARL R. MUSTO

Licensed Professional Land
Surveyor Certificate No. 11443

EXHIBIT "2"

CONDITIONS

1. That, in the event historic resources, including human skeletal remains, are identified during routine construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the State Historic Preservation Division shall be contacted immediately.
2. That the project shall be required to have an archaeological monitor on-site to monitor subsurface work.
3. That prior to final subdivision approval, Tam Yau Estates, LLC, will provide a public easement, a minimum of ten (10) feet wide, for pedestrian and bicycle access through the project cul-de-sac to the southeastern property line. The County's plan is to eventually link the subdivision to neighboring properties in order to provide connection between Makani Road and Makawao Avenue.
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