

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

November 2, 2012

**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 September 19, 2012 (site inspection) and October 3, 2012, makes reference to County Communication 12-132, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT 1813 BALDWIN AVENUE, TAX MAP KEY NO. (2) 2-5-004:007, MAKAWAO, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Xorin Balbes of Soulspace Ranch, LLC ("Soulspace") for a State District Boundary Amendment from Agricultural to Rural for property located at 1813 Baldwin Avenue, Makawao, Maui, Hawaii, consisting of approximately 5.66 acres. The District Boundary Amendment would allow for the continued use of existing dormitory facilities, historically known as the Fred Baldwin Memorial Home, and on-site educational programs to include exercise, yoga, metaphysics, water sports training, agriculture, and Hawaiian cultural practices. The District Boundary Amendment would also allow for the development of a proposed college, including a 7,090 square-foot classroom facility and a pool on the property to support educational programs.

According to the Department of Planning, its Zoning Administration and Enforcement Division determined that the historic dormitory use of the property was an existing, nonconforming use. The Fred Baldwin Memorial Home was constructed in 1910, and used first as a convalescent home, then as dormitory housing, over the ensuing 102 years. The Division also confirmed that the proposed use would be permitted within the County's Interim District as a quasi-public use, but a State Special Use Permit would be required for the proposed use within the State Agricultural District.

Your Committee notes that, in January 2012, the Maui Planning Commission granted a State Special Use Permit ("SUP") for the operation, which is currently known as the Lumeria. The SUP is valid until January 31, 2015.

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Your Committee further notes that Section 205-5(c), Hawaii Revised Statutes, permits public and quasi-public facilities in the State Rural District. According to the Department of Planning, the proposed use as a college has been determined to constitute a quasi-public use. Because the proposed use would be a permitted use in the State Rural District, the Department of the Corporation Counsel opined that the landowner would not be required to extend the SUP should the Council grant a District Boundary Amendment from Agricultural to Rural.

Your Committee also notes that the property is listed on the Hawaii Register of Historic Places and the National Register of Historic Places. According to the Department of Planning, the project is an excellent example of adaptive reuse of historic buildings. It is the first certified rehabilitation project to make use of historical tax credits in the State, and is, therefore, a demonstration project for the County.

The Chair of your Committee distributed suggested revisions to the five conditions recommended by the Maui Planning Commission, as well as six new conditions for consideration. The Chair's proposed revisions were based largely on the Department of Planning's written response dated September 25, 2012.

Your Committee revised the condition that tied overnight lodging in the dormitory units to educational programs. As revised, the condition requires that lodgers enroll in and attend on-site educational programs. It also allows lodgers to participate in off-site educational programs coordinated by Soulspace, as represented to the Department of Planning, the Maui Planning Commission, and the Council. To allow Soulspace flexibility, the condition further provides that substantive changes to the educational curriculum be presented to the Department of Planning for review and approval.

Your Committee also revised the condition requiring an annual report to clarify when it would be due, when the reporting requirement would cease, and the information to be reported.

Your Committee added a condition to require Soulspace to provide a copy of the State Historic Preservation Division's approval for the proposed studio/classroom building, prior to issuance of a grading or building permit for the structure. Your Committee also added conditions to require Soulspace to develop the property in substantial compliance with representations made to the Council in obtaining the District Boundary Amendment, prohibit Soulspace from advertising the dormitories as a transient

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vacation rental or hotel, and require that the two existing on-site duplex dwellings be used for faculty and staff, and not offered to students.

Your Committee discussed a proposed condition to restrict the dining room to serve only participants in the on-site educational programs, their guests, and staff of Soulspace, and to prohibit the dining room from operating as a restaurant. Your Committee declined to impose such a limitation on the project.

Your Committee voted 7-0 to recommend passage of the proposed bill on first reading, as revised, and filing of the communication. Committee Chair Carroll, Vice-Chair White, and members Baisa, Cochran, Couch, Mateo, and Pontanilla voted "aye". Committee members Hokama 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 the property owner and approved as to form and legality by the Department of the Corporation Counsel. 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.

Your Land Use Committee **RECOMMENDS** the following:

1. That Bill \_\_\_\_\_ (2012), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT 1813 BALDWIN AVENUE, TAX MAP KEY NO. (2) 2-5-004:007, MAKAWAO, MAUI, HAWAII", be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**;
2. That the County Clerk **RECORD** the unilateral agreement; and
3. That County Communication 12-132 be **FILED**.

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**LAND USE COMMITTEE**

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This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
ROBERT CARROLL, Chair

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ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2012)

A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT (CONDITIONAL BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT 1813 BALDWIN AVENUE, TAX MAP KEY NO. (2) 2-5-004:007, MAKAWAO, MAUI, HAWAII

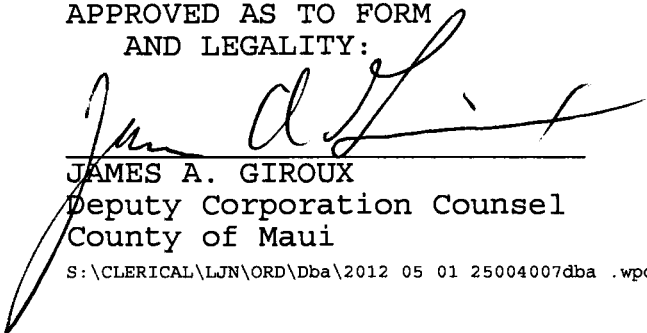
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Section 205-3.1, Hawaii Revised Statutes, and Chapter 19.68, Maui County Code, the State Land Use District classification is reclassified from the Agricultural District to the Rural District (Conditional Boundary Amendment) for that certain parcel of land situated at 1813 Baldwin Avenue, Makawao, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key No. (2) 2-5-004:007, comprising approximately 5.66 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in District Boundary Amendment Map No. DB-630, 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 of Conditions for State Land Use District Boundary Amendment, 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

EXHIBIT "A"

ALL of that certain parcel of land situate, lying and being at Sunnyside, Hamakuapoko, District of Makawao, Island and County of Maui, State of Hawaii, being LOT NUMBER 2, being a portion of the land deeded by the Board of Education to the Trustees of Oahu College as recorded January 30, 1860, in Liber 12 at Page 403, being also a portion of the Fred Baldwin Memorial Home Lot, and thus bounded and described:

Beginning at a pipe at the Northwesterly corner of this lot, being also the Easterly corner of Lot 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUNENE" being 3,976.08 feet South and 17,086.02 feet East, and running thence by azimuths measured clockwise from true South:

1. 279° 53' 30" 153.63 feet along the remaining portion of land deeded by the Board of Education to the Trustees of Oahu College, along land owned by Alexander & Baldwin, Inc. to a pipe;
2. 307° 37' 387.50 feet along same to a pipe;
3. 341° 13' 264.04 feet along same to a pipe;
4. 50° 32' 284.76 feet along the remaining portion of land deeded by the Board of Education to the Trustees of Oahu College, along land owned by Mauna Olu College, et al to a point;
5. 151° 10' 164.18 feet along the Northerly side of Baldwin Ave. to a point;
6. 119° 32' 165.50 feet along same to a point;
7. 94° 55' 205.15 feet along same to a point;
8. 193° 00' 462.76 feet along Lot 1 to the point of beginning and containing an area of 5.66 acres, more or less.

## EXHIBIT "B"

### CONDITIONS

1. That there shall be a prohibition on any action that would interfere with or restrain farming operations; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the agricultural district.
2. That notification shall be provided to all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under Chapter 165, the Hawaii Right to Farm Act, and that the notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.
3. That all overnight lodgers in the dormitory units shall enroll in and attend on-site educational programs and may participate in off-site educational programs coordinated by Soulspace Ranch, LLC, as represented to the Department of Planning, the Maui Planning Commission, and the Maui County Council. Substantive changes to the educational curriculum shall be presented to the Department of Planning for review and approval prior to being implemented.
4. That an annual report shall be submitted to the Department of Planning each year no later than 30 days after the anniversary date of the effective date of this ordinance. The annual report shall provide sufficient information on the number and types of classes offered, the number of students enrolled in classes, and the number of classes attended by overnight lodgers in the dormitory units, so that the property's primary public/quasi-public use can be verified. This reporting requirement shall cease upon the establishment of P-1 Public/Quasi-Public District zoning for the property.
5. That within one (1) year of the effective date of this ordinance, Soulspace Ranch, LLC shall apply for a change in zoning from Interim District to P-1 Public/Quasi-Public District.
6. That Soulspace Ranch, LLC shall obtain State Historic Preservation Division ("SHPD") approval for the proposed studio/classroom building, and shall provide a copy of SHPD approval to the Department of Planning, prior to issuance of a grading or building permit for the proposed structure.

7. That Soulspace Ranch, LLC shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the State District Boundary Amendment.
8. That the dormitories shall not be advertised by Soulspace Ranch, LLC as a transient vacation rental or hotel.
9. That the two existing on-site duplex dwellings shall be used for faculty and staff and not offered to students.



LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail  Pickup  To:

Office of the County Clerk  
County of Maui  
200 South High Street  
Wailuku, Hawaii 96793

Affects Tax Map Key: (2) 2-5-004:007

Total Number of Pages: 7

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

THIS INDENTURE, made this \_\_\_\_ day of \_\_\_\_\_, 2012, by Soulspace Ranch, LLC, whose principal place of business is located in Makawao, island of Maui, State of Hawaii, and whose mailing address is 1813 Baldwin Avenue, Makawao, Hawaii, 96768, hereinafter referred to as "Declarant", and who is the owner of that certain parcel located at Makawao, Maui, Hawaii, comprised of approximately 5.66 acres and identified for real property tax purposes by Tax Map Key No. (2) 2-5-004:007, hereinafter referred to as "Parcel" (or "Property").

**WITNESSETH:**

WHEREAS, the Council of the County of Maui, State of Hawaii, hereinafter referred to as "Council", is considering the Declarant's Petition for a State land use district boundary amendment for the Parcel, comprised of approximately 5.66 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 District Boundary Amendment Map No. DB-630, 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 Report No. \_\_\_\_\_, that the State Land Use District Boundary Amendment be approved for passage on first reading subject to certain conditions, pursuant to Section 19.68.040, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the State land use district boundary amendment provisions of Section 19.68.040, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.68.040, Maui County Code, relating to State land use district boundary amendments;

2. That, until written release by the County of Maui, the 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 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 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 Rural State land use district boundary amendment and that this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawaii;

6. That the Declarant agrees to develop 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;

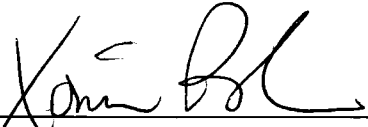
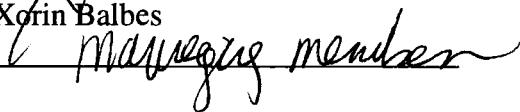
7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use;

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.

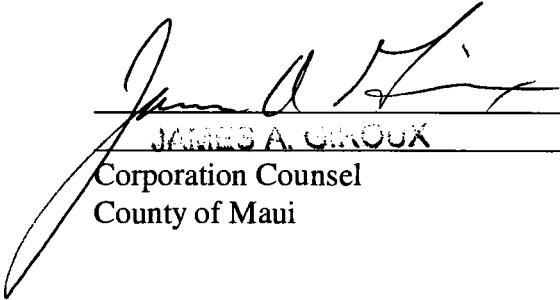
IN WITNESS WHEREOF, the undersigned has executed this Agreement the day and year first above written.

DECLARANT:

SOULSPACE RANCH, LLC

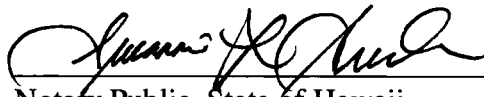
  
\_\_\_\_\_  
By: Xorin Balbes  
Its:   
\_\_\_\_\_

APPROVED AS TO FORM AND LEGALITY:


  
\_\_\_\_\_  
JAMES A. GIROUX  
Corporation Counsel  
County of Maui

STATE OF HAWAII        )  
                                  )SS.  
COUNTY OF MAUI        )

On October 11, 2012, before me personally appeared, XORIN BALBES, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

  
\_\_\_\_\_  
Notary Public, State of Hawaii  
Print Name: Terianne L. Arreola  
My commission expires: August 15, 2014

V.S.

Date: October 11, 2012	# Pages: 7
Name: Terianne L. Arreola	Second Circuit
Doc. Description:	Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment
 _____ Notary Signature	
NOTARY CERTIFICATION	(Seal)

V.S.

EXHIBIT "1"

ALL of that certain parcel of land situate, lying and being at Sunnyside, Hamakuapoko, District of Makawao, Island and County of Maui, State of Hawaii, being LOT NUMBER 2, being a portion of the land deeded by the Board of Education to the Trustees of Oahu College as recorded January 30, 1960, in Liber 12 at Page 403, being also a portion of the Fred Baldwin Memorial Home Lot, and thus bounded and described:

Beginning at a pipe at the Northwesterly corner of this lot, being also the Easterly corner of Lot 1, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUNENE" being 3,976.08 feet South and 17,086.02 feet East, and running thence by azimuths measured clockwise from true South:

1. 279° 53' 30" 153.63 feet along the remaining portion of land deeded by the Board of Education to the Trustees of Oahu College, along land owned by Alexander & Baldwin, Inc. to a pipe;
2. 307° 37' 387.50 feet along same to a pipe;
3. 341° 13' 264.04 feet along same to a pipe;
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8. 193° 00' 462.76 feet along Lot 1 to the point of beginning and containing an area of 5.66 acres, more or less.

EXHIBIT "2"

**CONDITIONS**

1. That there shall be a prohibition on any action that would interfere with or restrain farming operations; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the agricultural district.
2. That notification shall be provided to all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under Chapter 165, the Hawaii Right to Farm Act, and that the notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.
3. That all overnight lodgers in the dormitory units shall enroll in and attend on-site educational programs and may participate in off-site educational programs coordinated by Soulspace Ranch, LLC, as represented to the Department of Planning, the Maui Planning Commission, and the Maui County Council. Substantive changes to the educational curriculum shall be presented to the Department of Planning for review and approval prior to being implemented.
4. That an annual report shall be submitted to the Department of Planning each year no later than 30 days after the anniversary date of the effective date of this ordinance. The annual report shall provide sufficient information on the number and types of classes offered, the number of students enrolled in classes, and the number of classes attended by overnight lodgers in the dormitory units, so that the property's primary public/quasi-public use can be verified. This reporting requirement shall cease upon the establishment of P-1 Public/Quasi-Public District zoning for the property.
5. That within one (1) year of the effective date of this ordinance, Soulspace Ranch, LLC shall apply for a change in zoning from Interim District to P-1 Public/Quasi-Public District.
6. That Soulspace Ranch, LLC shall obtain State Historic Preservation Division ("SHPD") approval for the proposed studio/classroom building, and shall provide a copy of SHPD approval to the Department of Planning, prior to issuance of a grading or building permit for the proposed structure.
7. That Soulspace Ranch, LLC shall develop the property in substantial compliance with the representations made to the

Maui County Council in obtaining the State District Boundary Amendment.

8. That the dormitories shall not be advertised by Soulspace Ranch, LLC as a transient vacation rental or hotel.
9. That the two existing on-site duplex dwellings shall be used for faculty and staff and not offered to students.

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