

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

June 17, 2016

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 March 16, 2016, makes reference to County Communication 15-215, from Councilmember Stacy Crivello, transmitting a proposed resolution entitled "REFERRING TO THE MOLOKAI PLANNING COMMISSION A PROPOSED BILL TO CHANGE ZONING FROM INTERIM TO AGRICULTURAL FOR 14.59 ACRES AT KAWELA, MOLOKAI, HAWAII."

The purpose of the proposed resolution is to refer to the Molokai Planning Commission a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM TO AGRICULTURAL FOR 14.59 ACRES AT KAWELA, MOLOKAI, HAWAII." The purpose of the proposed bill is to grant a Change in Zoning from Interim District to Agricultural District for 14.59 acres along Kamehameha V Highway in Kawela, Molokai, Hawaii, identified for real property tax purposes as tax map key (2) 5-4-001:029.

Your Committee notes it previously reported on this matter through Committee Report 15-119, which recommended the proposed resolution be adopted. At its meeting of September 4, 2015, the Council adopted Resolution 15-111.

Your Committee also notes the property is owned by the Weymouth Kamakana Revocable Trust dated November 15, 2007; William H. Grambusch; Nanette Grambusch; and Pilialoa Napoleon-Grambusch.

By correspondence dated January 15, 2016, the Planning Director transmitted the Molokai Planning Commission's recommendation to approve a proposed Change in Zoning to R-3 Residential District rather than Agricultural District, with a single condition of zoning. The proposed

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condition requires any future subdivided lots to be a minimum of two acres.

The Planning Director also transmitted Land Zoning Map L-3001, reflecting the proposed change to R-3 Residential District.

Your Committee notes the Planning Director indicated in his correspondence that the property is in the State Urban District and is designated Single Family in the Molokai Community Plan.

According to the Department of Planning's report, the owner intends to someday conduct farming activities such as growing orchards, mango patches, and kiawe on the property. Section 19.08.020, Maui County Code, permits greenhouses, flower and truck gardens, and nurseries in Residential Districts.

Based on the Molokai Planning Commission's recommendation, and at the request of the Chair of your Committee, the Department of the Corporation Counsel transmitted a revised proposed bill, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR 14.59 ACRES AT KAWELA, MOLOKAI, HAWAII," approved as to form and legality.

The Planning Director explained that Interim-zoned land cannot be subdivided. He said the Kamakana family needs to settle some estate matters and is requesting the Change in Zoning for that reason. Because the zoning must be consistent with the Community Plan designation, the Molokai Planning Commission was unable to recommend a Change in Zoning to Agricultural District unless the State Land Use District classification and the Community Plan designation were also changed. Instead, the Commission recommended the zoning be changed to R-3 Residential District, conditioned upon a two-acre minimum lot size to maintain the intent of Resolution 15-111.

The Planning Director said there were no objections or concerns raised to the proposed change at the public hearing on Molokai. He noted

COUNCIL OF THE COUNTY OF MAUI
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the Department discussed this recommendation with the Kamakana family and they are in agreement.

The Planning Director said a subdivision of the property could yield six or seven lots, with the proposed condition on minimum lot sizes.

Your Committee voted 5-0 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Carroll and members Baisa, Cochran, Couch, and Crivello voted "aye." Committee Vice-Chair Victorino and member Guzman were excused.

Your Committee is in receipt of an agreement, entitled "Unilateral Agreement and Declaration for Conditional Zoning," executed by the landowners, and approved as to form and legality by the Department of the Corporation Counsel.

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

1. That Bill _____ (2016), attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR 14.59 ACRES AT KAWELA, MOLOKAI, 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 15-215 be FILED.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

Page 4

**Committee
Report No.** _____

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



ROBERT CARROLL, Chair

lu:cr:16016ab:scj

ORDINANCE NO _____

BILL NO. _____ (2016)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR 14.59 ACRES AT KAWELA, MOLOKAI, HAWAII

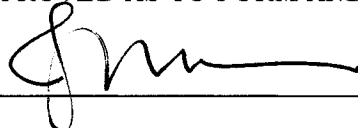
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapters 19.08 and 19.510, Maui County Code, a Change in Zoning from Interim District to R-3 Residential District (Conditional Zoning) is hereby granted for that certain parcel of land situated at Kawela, Molokai, Hawaii, and identified for real property tax purposes as tax map key (2) 5-4-001:029, comprising approximately 14.59 acres, and more particularly described in Exhibit "A," attached hereto and made a part hereof, and in Land Zoning Map No. L-3001, 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 19.510.050, Maui County Code, the zoning 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:



Department of the Corporation Counsel
County of Maui

lu:misc:016acizbill

EXHIBIT "A"

All of that certain parcel of land (being portion(s) of the land(s) described in and covered by Royal Patent Number 7656, Land Commission Award Number 8559-B, Apana 28 to William C. Lunalilo, Royal Patent Number 3721, Land Commission Award Number 9988 to Lio, and Royal Patent Number 6056, Land Commission Award Number 10107 to Maunaloa, and Accretions to Royal Patent Number 3721, Land Commission Award Number 9988 to Lio and Royal Patent Number 6056, Land Commission Award Number 10107 to Maunaloa, situate, lying and being on the northeasterly side of Old Government Road at Kawela, County of Maui, State of Hawaii, being LOT 1; and thus bounded and described:

Beginning at the southwesterly corner of this piece of land, on the northeasterly side of Old Government Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU LUAHINE" being 22,836.64 feet south and 21,216.80 feet east, and running by azimuths measured clockwise from true South:

| | | | |
|-----|--------------|--------|---|
| 1. | 202° 30' | 433.23 | feet; |
| 2. | 112° 30' | 107.44 | feet; |
| 3. | 92° 30' 30" | 124.43 | feet along R.P. 3721, L.C. Aw. 9988 to Lio; |
| 4. | 200° 12' 30" | 67.92 | feet; |
| 5. | 86° 30' | 234.00 | feet; |
| 6. | 127° 55' | 60.00 | feet; |
| 7. | 176° 44' | 25.04 | feet; |
| 8. | 267° 07' 30" | 343.59 | feet along Land Court Application 1714 (Pending); |
| 9. | 244° 48' | 48.15 | feet along Land Court Application 1714 (Pending); |
| 10. | 234° 07' | 132.30 | feet along Land Court Application 1714 (Pending); |
| 11. | 242° 06' 30" | 293.05 | feet along Land Court Application 1714 (Pending); |
| 12. | 310° 00' | 229.47 | feet along Kawela Pump Site; |

| | | | |
|-----|--------------|--------|---|
| 13. | 327° 32' | 29.84 | feet along Kawela Pump Site; |
| 14. | 276° 42' | 149.00 | feet along Kawela Pump Site; |
| 15. | 344° 18' | 59.90 | feet along Land Court Application 1714 (Pending); |
| 16. | 7° 43' | 457.00 | feet along Land Court Application 1714 (Pending); |
| 17. | 15° 10' | 265.05 | feet along Land Court Application 1714 (Pending); |
| 18. | 33° 34' 30" | 250.36 | feet along Land Court Application 1714 (Pending); |
| 19. | 121° 17' 30" | 313.52 | feet along the northeasterly side of Old Government Road; |
| 20. | 127° 30' | 270.45 | feet along the northeasterly side of Old Government Road; |
| 21. | 123° 30' | 49.00 | feet along the northeasterly side of Old Government Road, to the point of beginning and containing an area of 14.586 acres, more or less. |

Said above described parcel of land having been acquired as follows:

1. By JACKIE L. GRAMBUSCH and WILMA KAMAKANA GRAMBUSCH, husband and wife, as Tenants by the Entirety, as to an undivided 1/2 interest, by QUITCLAIM DEED of WILMA KAMAKANA GRAMBUSCH, wife of Jackie L. Grambusch, dated August 10, 1977, recorded in Liber 12371 Page 47; and
2. By WEYMOUTH KAMAKANA, Trustee of the Weymouth Kamakana Revocable Trust dated November 15, 2007, with full powers to sell, mortgage, lease or otherwise deal with the land, as to an undivided 1/2 interest, by QUITCLAIM DEED of WEYMOUTH KAMAKANA, husband of Jule Patten Kamakana, dated November 19, 2007, recorded as Document No. 2007-204777.

EXHIBIT "B"

CONDITION OF ZONING

1. That the minimum lot size of any future lots that may be created by subdivision of the parcel identified for real property tax purposes as tax map key (2) 5-4-001:029 shall be two acres.

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

Total No. of Pages 11

Affects Tax Map Key: 5-4-001-029

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 3rd day of June, 2016, hereinafter referred to as "Declaration" or "Unilateral Agreement", by WEYMOUTH KAMAKANA, Trustee of the Weymouth Kamakana Revocable Trust dated November 15, 2007, whose mailing address is POB 145, Kaunakakai, Molokai, Hawaii 96748; and WILLIAM H. GRAMBUSCH husband of NANETTE GRAMBUSCH, and NANETTE GRAMBUSCH, wife of WILLIAM H. GRAMBUSCH, whose mailing address is POB 614, Kaunakakai, Molokai, Hawaii 96748; and PILIALOHA NAPOLEON-GRAMBUSCH, unmarried, Son of WILLIAM and NANETTE GRAMBUSCH, whose mailing address is 514 Pililoko St., Paia, Maui, Hawaii, 96779, hereinafter collectively referred to as "DECLARANT" and who are owners of that certain parcel located at Kawela, Island of Molokai, County of Maui, Hawaii, comprised of 14.586 acres or 635,366 square feet, and identified for real property tax purposes by Tax Map Key No. (2) 5-4-001-029, hereinafter referred to as "PARCEL" or "PROPERTY".

W I T N E S S E T H:

WHEREAS, the Council of the County of Maui, State of Hawaii; hereinafter referred to as "Council", is considering the establishment of the zoning for the Parcel, comprised of approximately 14.586 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-3001, 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 establishment of zoning be approved for passage on first reading subject to certain conditions, pursuant to Section 19.510.050, Maui County Code;

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

NOW, THEREFORE, the Declarant make the following Declaration:

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

2. That until written release by the County of Maui, the 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 person, 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 zoning ordinance approving the establishment of R-3 Residential zoning and 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 zoning ordinance;

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

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED, that until release 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 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 Declaration the day and year first above written.

DECLARANT:

Weymouth Kamakana
WEYMOUTH KAMAKANA, Trustee
Weymouth Kamakana Revocable Trust
dated November 15, 2007, Owner

William H. Grambusch
WILLIAM H. GRAMBUSCH, Owner

Nanette Grambusch
NANETTE GRAMBUSCH, Owner

Pilialoha Napoleon-Grambusch
PILIALOHA NAPOLEON-GRAMBUSCH, Owner

APPROVED AS TO FORM AND LEGALITY:

J. M. [Signature]
Deputy Corporation Counsel
County of Maui

EXHIBIT "1"

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| 5. | 86° 30' | 234.00 | feet; |
| 6. | 127° 55' | 60.00 | feet; |
| 7. | 176° 44' | 25.04 | feet; |
| 8. | 267° 07' 30" | 343.59 | feet along Land Court Application 1714 (Pending); |
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2. By WEYMOUTH KAMAKANA, Trustee of the Weymouth Kamakana Revocable Trust dated November 15, 2007, with full powers to sell, mortgage, lease or otherwise deal with the land, as to an undivided 1/2 interest, by QUITCLAIM DEED of WEYMOUTH KAMAKANA, husband of Jule Patten Kamakana, dated November 19, 2007, recorded as Document No. 2007-204777.

EXHIBIT "2"

CONDITION OF ZONING

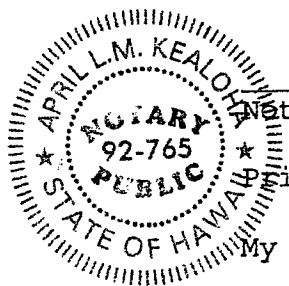
1. That the minimum lot size of any future lots that may be created by subdivision of the parcel identified for real property tax purposes as tax map key (2) 5-4-001:029 shall be two acres.

END OF EXHIBIT "2"

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 27 day of May, 2016, before me personally appeared Weymouth Kamakana to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

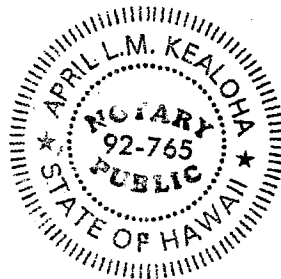
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



April L.M. Kealoha
Notary Public, State of Hawaii
Print Name: April LM Kealoha
My Commission Expires: 11-9-2016

NOTARY PUBLIC CERTIFICATION

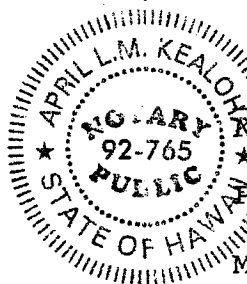
Doc. Date: May 27, 2016 # Pages: 11
Notary Name: April LM Kealoha Judicial Circuit: Second
Document Description: Unilateral
Agreement and Declaration for
Conditional Zoning
Notary Signature: April L.M. Kealoha
Date: 5-27-2016



STATE OF HAWAII)
County of Maui) SS.

On this 27 day of May, 2016, before me personally appeared William H. Grambusch, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

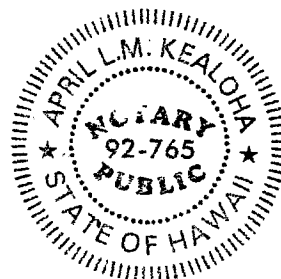
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



April L.M. Kealoha
Notary Public, State of Hawaii
Print Name: April L.M. Kealoha
My Commission Expires: 11-9-2016

NOTARY PUBLIC CERTIFICATION

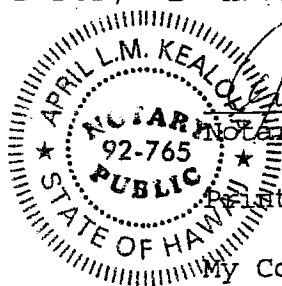
Doc. Date: May 27, 2016 # Pages: 11
Notary Name: April L.M. Kealoha Judicial Circuit: Second
Document Description: Unilateral
Agreement & Declaration for
Conditional Zoning
Notary Signature: April L.M. Kealoha
Date: 5-27-2016



STATE OF HAWAII)
County of Maui) SS.

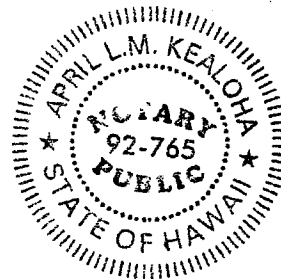
On this 27 day of May, 2016, before me personally appeared Nanette Grambusch, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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


April L.M. Kealoha
Notary Public, State of Hawaii
Print Name: April L.M. Kealoha
My Commission Expires: 11-9-2016

NOTARY PUBLIC CERTIFICATION

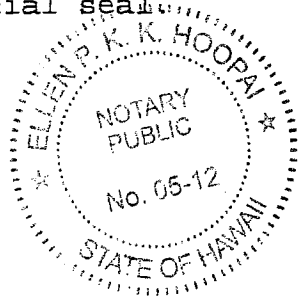
Doc. Date: May 27, 2016 # Pages: 11
Notary Name: April L.M. Kealoha Judicial Circuit: Second
Document Description: Unilateral
Agreement & Declaration for
Conditional Zoning
Notary Signature: April L.M. Kealoha
Date: 5-27-2016



STATE OF Hawaii)
County of Maui) SS.

On this 3rd day of June, 2016, before me personally appeared Pili'ala Napakea-Crambusch, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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



Ellen P. K. K. Hoopai
Notary Public, State of Hawaii
Print Name: ELLEN P K K HOOPAI
My Commission Expires: 1-2-17

NOTARY PUBLIC CERTIFICATION

Doc. Date: 6/3/16 # Pages: 11
Notary Name: ELLEN P K K HOOPAI Judicial Circuit: 2ND
Document Description: Unilateral Agreement
+ Declaration For Conditional Zoning
Notary Signature: Ellen P. K. K. Hoopai
Date: 6/3/16

