



PACIFIC RIM LAND, INC.

November 18, 2016

Mr. Daniel Orodener
Executive Officer
Land Use Commission
State of Hawaii
Room 406
235 South Beretania Street
Honolulu, HI 96804-2359

Re: 2015 Annual Report - Docket No.: A13-797
Petitioner: CMBY 2011 Investment, LLC
To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District
for Certain Lands Situate at Pulehunui, District of Wailuku, Island and County of Maui,
State of Hawai'i, consisting of approximately 86.030 acres,
Tax Map Key No. (2)3-8-008:019

LAND USE COMMISSION
STATE OF HAWAII
2016 NOV 21 PM 2:20

Dear Mr. Orodener:

On behalf of CMBY 2011 Investment, LLC ("CMBY"), I hereby submit the 2016, Annual Report in accordance with Condition 22 of the State Land Use Commission Findings of Fact, Conclusions of Law and Decision and Order, dated, filed and effective on November 22, 2013, in Docket No.: A13-797, to report on the status of the development of the heavy industrial subdivision (the "Project"). The enclosed matrix outlines CMBY's compliance with each of the 25 conditions of approval under said Decision and Order.

On June 5, 2015, the Community Plan Amendment (from Agriculture to Heavy Industrial), and the Change in Zone (from County Agriculture District to M-3 Restricted Industrial District) passed Final Reading at the meeting of the Council of the County of Maui.

On June 9, 2015, the Mayor of the County of Maui approved Bill No. 43 (2015), A Bill For An Ordinance to Amend the Kihei-Makena Community Plan and Land Use Map from Agriculture to Heavy Industrial and was designated as Ordinance No. 4219. A copy is attached for your reference.

On June 9, 2015, the Mayor of the County of Maui approved Bill No. 44 (2015), A Bill For An Ordinance to Change Zoning From Agricultural District to M-3 Restricted Industrial District (Conditional Zoning) and was designated As Ordinance No. 4220. A copy is attached for your reference.

Since County approval, CMBY has submitted its application for subdivision approval to the County. CMBY intends to pursue satisfaction of several of the conditions of approval imposed under the Decision and Order and other conditions of approval in connection with subdivision.

Mr. Daniel Orodener
November 18, 2016
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We trust that the foregoing and enclosed satisfies the annual reporting requirement of the subject Docket. Please feel free to contact me at any time should you have any questions or require any additional information. Thank you for our attention.

Sincerely,

A handwritten signature in black ink, appearing to read "Blanca Lafolette". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Blanca Lafolette
Project Coordinator for
CMBY 2011 Investment, LLC

Enclosures

cc. *Maui County Planning Department
State of Hawaii Office of Planning
Maui County Council Chair Mike White*

CMBY 2011 INVESTMENT, LLC (the "Petitioner")
State Land Use Commission Docket No.: A13-797, 2016 Annual Report

State Land Use Commission Docket No.: A13-797 Annual Report

On November 22, 2013, the State Land Use Commission reclassified approximately 86.030 acres of land, more particularly identified as Tax Map Key No.: (2) 3-8-008:019 (the "Petition Area"), from the Agricultural District to the Urban District under LUC Docket No.: A13-797. Petitioner intends to develop the Petition Area as a heavy industrial subdivision (the "Project").

No.	Condition	Status	Comments
1	<p><u>Highway and Road Improvements.</u> The Petitioner shall abide by, complete and/or submit the following:</p> <p>a. The TIAR shall be revised and resubmitted to the State Department of Transportation ("DOT") for review prior to Petitioner submitting an application for Preliminary Subdivision Approval to the County of Maui. The Petitioner shall obtain acceptance of the revised TIAR ("Revised TIAR") from the DOT prior to Petitioner receiving Preliminary Subdivision Approval from the County of Maui.</p> <p>b. Petitioner shall fund and provide for the planning, design and construction of all recommended transportation improvements required to mitigate local and direct Project-generated and/or related transportation impacts, in accordance with the Revised TIAR and required updates to the TIAR, as accepted by DOT, at no cost to the State, and in accordance with the requirements of the County of Maui Department of Public Works, as applicable. Petitioner shall also dedicate land to accommodate auxiliary lanes on Mokulele Highway, as required.</p> <p>c. Petitioner shall provide its fair share contribution toward the cost of regional transportation improvements to State highways, as determined by Petitioner and DOT. Regional improvements may also include the reservation and contribution of land for such improvements.</p> <p>d. Petitioner shall provide and complete all transportation improvements as recommended in the DOT-accepted Revised TIAR prior to the certificate of occupancy for the first building in the Project being issued by the County of Maui.</p>	On-going	<p>a. Petitioner revised the TIAR that was prepared by Phillip Rowell and Associates dated January 24, 2012, and submitted that revised TIAR, dated September 2013, to the DOT. The DOT has confirmed that the September 2013 TIAR is acceptable.</p> <p>b. Petitioner shall comply with this condition.</p> <p>c. Petitioner shall comply with this condition.</p> <p>d. Petitioner shall comply with this condition.</p>
2	<p><u>Energy Conservation.</u> Petitioner, where feasible, shall implement energy conservation measures such as use of solar energy and solar heating and incorporate such measures into the proposed Project.</p>	Satisfied	<p>The Petitioner shall comply with this condition as the Project is developed and has incorporated into the Covenants, Conditions and Restrictions for the Project</p>
3	<p><u>Water System.</u> Petitioner shall provide the necessary water source, storage and transmission facilities to the satisfaction of the County of Maui's Department of Water Supply and/or DOH and/or Commission on Water Resource Management, as applicable, to service the Petition Area. Petitioner shall also provide notice to surrounding landowners, regarding the required separation distance for individual wastewater systems from the proposed drinking water source.</p>	Satisfied	<p>CMBY's well completion reports were submitted to the Commission on Water Resource Management in August 2014 Petition shall comply with this condition.</p>

4	Water Conservation. Petitioner shall implement water conservation measures and best management practices, including water efficient plumbing fixtures, high efficiency or drip irrigation systems, and drought tolerant landscaping.	Satisfied	Petitioner shall comply with this condition as the Project is developed.
5	Environmental Management. Petitioner shall comply with the requirements of the County Department of Environmental Management and/or DOH as applicable.	On-going	Petitioner shall comply with this condition.
6	<p>Pollution Prevention Best Management Practices. Petitioner shall prepare a pollution prevention plan that incorporates Best Management Practices ("BMPs") for use during construction and development and during the operational phase of the Project.</p> <p>The pollution prevention plan shall be implemented by Petitioner, its successors and assigns, and shall be incorporated into the CC&Rs for the Project. BMPs shall be implemented during construction to control fugitive dust, minimize infiltration and runoff from construction and vehicle operations, and reduce or eliminate soil erosion and groundwater and surface water pollution in accordance with DOH rules and guidelines and County of Maui rules and ordinances. BMPs for the operational phase of the Project shall be directed at preventing all pollutants that may be associated with a specified industrial use from being released into the environment, including structural BMPs such as oil/water separators, detention ponds, lined containment pits, and stormwater filtration units designed to contain and remove industrial contamination.</p> <p>The pollution prevention plan shall include but not be limited to:</p> <p>a. Cleaning, repair, and maintenance of equipment involving the use of industrial liquids, such as gasoline, diesel, solvent, motor oil, hydraulic oil, gear oil, brake fluid, acidic or caustic liquids, antifreeze, detergents, degreasers, etc., shall be conducted on a concrete floor, whether roofed or unroofed. The concrete floor shall be constructed to contain any drip or spills and to provide for the recovery of any spilled liquids. Water drainage from these concrete floors shall, if necessary, pass through a separator sump before being discharged. The separated fluids shall be handled and disposed of in compliance with applicable DOH requirements for disposal of such materials. This material must be tested to determine whether it qualifies as hazardous waste and if determined to be hazardous waste, must be disposed of in compliance with hazardous waste rules.</p> <p>b. Any containers used for storage of used oil or other industrial liquids shall be kept on a concrete surface. The surface shall be bermed to prevent the loss of liquid in the event of spills or leaks. The containers shall be sealed and kept under shelter from the rain.</p> <p>c. Petitioner and all lot owners and occupants shall inform their employees to immediately collect and contain any industrial liquid spills on the concrete floor. Employees shall be informed against discharging or spilling any industrial liquids, and all</p>	Satisfied	A Pollution Prevention Best Management Practices Plan has been prepared and incorporated into the Covenants, Conditions, and Restrictions for the Project. Petitioner shall comply with this condition.

	<p>be aware to prevent any industrial spill onto the bare ground.</p> <p>d. For parking areas, BMPs emphasizing pollution prevention shall be established. Large vehicles such as trucks and construction equipment shall utilize drip pans to avoid release of petroleum onto paved surfaces. Areas used primarily for automobile parking shall be periodically checked and cleaned to avoid buildup or oil or other automotive fluids: Maintenance work other than emergency work on vehicles should be prohibited in parking areas.</p>		
7	<p><u>Potable Water and Injection Wells.</u> Any injection well that would dispose of desalinization wastewater or other types of wastewater such as industrial process wastewater, sewage, or rainfall runoff, shall comply with Chapter 11-23, HAR, entitled Underground Injection Control, and shall demonstrate that the injections shall not adversely affect downgradient streams, Kealia Pond National Wildlife Refuge, and coastal waters.</p>	Satisfied	Petitioner shall comply with this condition as Project is developed
8	<p><u>Debris Catch Basin.</u> All drainage injection wells or subsurface drainage structures shall be designed with a debris catch basin to allow the detention, before flowing into the drainage well, of rubbish and sediments that are often carried and deposited by runoff. The debris catch basin shall be periodically inspected and cleaned. An environmental precautionary sign shall be installed at, or painted on the ground next to, each drainage injection well, which shall read: "DUMP NO WASTE, GOES TO GROUNDWATER AND OCEAN HELP PROTECT HAWAII'S ENVIRONMENT."</p>	Satisfied	Petitioner shall comply with this condition as Project is developed
9	<p><u>Stormwater Management and Drainage.</u> Petitioner shall fund the design and construction of stormwater and drainage system improvements for the Petition Area in accordance with the requirements of the County of Maui's Department of Public Works, and incorporate in the design and construction of backbone infrastructure low impact development features for stormwater capture and reuse, to the extent practicable and allowed by the County of Maui, to prevent runoff from adversely affecting downstream properties and facilities and receiving streams, Kealia Pond National Wildlife Refuge, and coastal waters, consistent with Federal, State, and County laws, rules, and ordinances.</p> <p>The Petitioner, its successors and assigns, shall cause to be maintained the stormwater and drainage system improvements for the Petition Area. Petitioner shall include in the CC&Rs for the Project the requirement that low impact development features be incorporated in individual site design and development, to the extent practicable and allowed by the County of Maui.</p>	Satisfied	Petitioner shall comply with this condition as Project is developed, and has incorporated into the Covenants, Conditions, and Restrictions for the Project.
10	<p><u>Water Quality Monitoring.</u> Petitioner shall develop and implement a near shore water quality monitoring program to detect the presence of contaminants resulting from the development of the Project. The monitoring program will be developed by the Petitioner</p>	Satisfied	A nearshore water quality monitoring program has been developed. Petitioner shall comply with this condition.

	in consultation with the State Department of Health, to include the sampling constituents, the location, frequency and duration of monitoring, and reporting requirements. If contaminants are present, and such presence is irrefutably linked to the development of, or operations at, the Project, Petitioner, its successors and assigns, shall, in coordination with the DOH, implement appropriate revisions to the pollution prevention plan and BMPs, and CC&Rs if applicable, to address such contaminants.		
11	Civil Defense. Petitioner shall fund and install one (1) civil defense warning siren as specified by and in a location identified by the State Civil Defense agency.	Satisfied	The warning siren will be included in the Project construction plans/final subdivision plans to be approved by the County. Petitioner shall comply with this condition.
12	Restricted Industrial Uses. The uses within the Petition Area shall be limited to those allowed in the M-3 Restricted Industrial District as established by the County of Maui under Ordinance 3977, as the same may be amended from time to time.	Satisfied	Petitioner shall comply with this condition.
13	Provisions of the Hawai'i Right to Farm Act. For all land in the Petition Area or any portion thereof that is adjacent to land the State Land Use Agricultural District, Petitioner shall comply with the following: (a) Petitioner and its successors and assigns shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management principles on adjacent or contiguous lands in the State Agricultural District. For the purpose of these conditions, "farming operations" shall have the same meaning as provided in Section 165-2, HRS; and (b) Petitioner shall notify all prospective developers or purchasers of land or interest in land in the Petition Area, and provide or require subsequent notice to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the State Agricultural District are protected under Chapter 165, HRS, the Hawai'i Right to Farm Act. The notice shall disclose to all prospective buyers, tenants, or lessees of the Petition Area that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. The notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.	Satisfied	Petitioner has incorporated this condition into the Covenants, Conditions and Restrictions for the Project. The Petitioner shall comply with this condition.
14	Flora and Fauna. Petitioner shall ensure that all exterior lighting fixtures are down-shielded to minimize the harmful effects of lighting on endangered avifauna.	Satisfied	Petitioner has incorporated this condition into the Covenants, Conditions and Restrictions for the Project. Petitioner shall comply with this condition.
15	Hawaiian Hoary Bats. Petitioner shall include a provision in the CC&R prohibiting the construction of barbed wire fences within the Petition Area.	Satisfied	Petitioner has incorporated this condition into the Covenants, Conditions, and Restrictions for the Project. Petitioner shall comply with this condition.

16	<u>Established Access Rights Protected.</u> Pursuant to Article XII, section 7, of the Hawai'i State Constitution, Petitioner shall preserve any established access rights of Native Hawaiians who have customarily and traditionally used the Petition Area to exercise subsistence, cultural, and religious practices, or for access to other areas.	Satisfied	Petitioner shall comply with this condition as Project is developed.
17	<u>Archaeological and Historic Preservation.</u> Petitioner shall comply with mitigation measures recommended by the SHPD. Archaeological monitoring shall be conducted should an alternative access road alignment be pursued.	Satisfied	Petitioner has complied with this condition. The alternative access road will not be pursued.
18	<u>Previously Unidentified Burials and Archaeological/Historic Sites.</u> In the event that historic resources, including human skeletal remains, are identified during construction activities, all work shall cease in the immediate vicinity of the find, the find shall be protected from additional disturbance, and the SHPD Maui Island Section shall be contacted immediately. Without any limitation to any other condition found herein, if any burials or archaeological or historic sites are discovered during the course of construction of the Project, all construction activity in the vicinity of the discovery shall stop until the issuance of an archaeological clearance from the SHPD that mitigation measures have been implemented to its satisfaction.	On-going	Petitioner shall comply with this condition as Project is developed.
19	<u>Infrastructure Deadline.</u> The Petitioner shall complete construction of the proposed backbone infrastructure for the Project, which consists of the primary roadways and access points, internal roadways, water and electrical system improvements, and stormwater/drainage and other utility system improvements, within ten (10) years from the date of this Decision and Order approving the Petition.	On-going	Petitioner shall comply with this condition as Project is developed...
20	<u>Compliance with Representations.</u> The Petitioner shall develop the Petition Area in substantial compliance with the representations made to the Commission as reflected in the findings of fact, conclusions of law, and decision and order. Failure to so develop the Petition Area may result in reversion of the Petition Area to its former classification, or change to a more appropriate classification.	Satisfied	Petitioner shall comply with this condition as Project is developed.
21	<u>Notice of Change of Ownership.</u> Petitioner shall notify the Commission of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Petition Area at any time, prior to completion of development of the Petition Area.	On-going	Petitioner shall comply with this condition.
22	<u>Annual Reports.</u> Petitioner shall timely provide and without any prior notice, annual reports to the Commission, the Office of Planning and the Maui County Planning Department, and their respective successors, in connection with the status of the development of the Petition Area and Petitioner's progress in complying with the	On-going	Petitioner acknowledges this condition, and has submitted the 2014 and 2015 LUC Annual Report and submits this 2016 LUC Annual Report in compliance with Condition 22.

	conditions imposed herein. The annual report shall be in a form prescribed by the Executive Officer of the Commission. The annual report shall be due on or before the anniversary date of the Decision and Order for the reclassification of the Petition Area.		
23	<u>Release of Conditions.</u> The Commission may fully or partially release the conditions provided herein as to all or any portion of the Petition Area upon timely motion and upon provision of adequate assurance of satisfaction of these conditions by Petitioner or its successors or assigns.	On-going	The Petitioner acknowledges this condition.
24	<u>Notice of Imposition of Conditions.</u> Within seven (7) days of the issuance of the Commission's Decision and Order for the subject reclassification, Petitioner shall: (a) record with the Bureau of Conveyances of the State of Hawai'i a statement that the Petition Area is subject to conditions imposed herein by the Commission in the reclassification of the Petition Area; and (b) file a copy of such recorded statement with the Commission.	Satisfied	The Notice of Imposition of Conditions by the Land Use Commission was recorded at the Bureau of Conveyances on November 27, 2013 as Document No. A-50790870. A certified copy of the recorded Notice was filed with the Commission on November 27, 2013, by Jennifer A. Benck.
25	<u>Recordation of Conditions.</u> Petitioner shall record the conditions imposed herein by the Commission with the Bureau of Conveyances pursuant to Section 15-15-92, HAR. All such conditions shall run with the land.	Satisfied	A Declaration of Conditions was recorded at the Bureau against the Petition Area as Document No. A-50880606 on December 6, 2013. A certified copy of said Declaration filed with the Commission on December 9, 2013, by Jennifer A. Benck.

ORDINANCE NO. 4220

BILL NO. 44 (2015)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM
AGRICULTURAL DISTRICT TO M-3 RESTRICTED INDUSTRIAL
DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT
PULEHUNUI, DISTRICT OF WAILUKU, MAUI, HAWAII,
TAX MAP KEY NUMBER (2) 3-8-008:019, FOR THE
PROPOSED PUUNENE HEAVY INDUSTRIAL SUBDIVISION

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

SECTION 1. Pursuant to Chapters 19.25 and 19.510, Maui County Code, a change in zoning from Agricultural District to M-3 Restricted Industrial District (Conditional Zoning) is hereby granted for that certain parcel of land situated at Pulehunui, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2) 3-8-008:019, comprising approximately 86.030 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-212, 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:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

LU-30 2015 05-05 Ord cond zoning 2014-3084

EXHIBIT "A"

All of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Number 8140, Land Commission Award Number 5230 to Keaweamahi) situate, lying and being at Pulehunui, District of Wailuku, Island and County of Maui, State of Hawaii, being LOT 2 of the PUA'A SUBDIVISION, per survey dated March 8, 2011, to wit:

Beginning at a pipe at the northeasterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HELE" being 2,265.99 feet north and 17,073.08 feet east and running by azimuths measured clockwise from true South:

- | | | | |
|-----|----------|--------|---|
| 1. | 199° 00' | 428.45 | feet along Lot 3 of the Pua'a Subdivision to a pipe; |
| 2. | 179° 00' | 180.00 | feet along same to a pipe; |
| 3. | 260° 00' | 50.00 | feet along same to a pipe; |
| 4. | 315° 00' | 200.00 | feet along same to a pipe; |
| 5. | | | Thence along same on a curve to the left with a radius of 515.00 feet, the chord azimuth and distance being: |
| | 299° 00' | 283.91 | feet along same to a pipe; |
| 6. | 283° 00' | 170.00 | along Lot 3 of the Pua'a Subdivision to a pipe; |
| 7. | 296° 00' | 390.00 | feet along same to a pipe; |
| 8. | | | Thence along same on a curve to the right with a radius of 362.00 feet, the chord azimuth and distance being: |
| | 345° 00' | 455.63 | feet to a pipe; |
| 9. | 24° 00' | 240.00 | feet along Lot 3 of the Pua'a Subdivision to a pipe; |
| 10. | | | Thence along same on a curve to the left with a radius of 410.00 feet, the chord azimuth and distance being: |
| | 348° 30' | 476.18 | feet to a pipe; |
| 11. | 313° 00' | 225.00 | feet along Lot 3 of the Pua'a Subdivision to a pipe; |

12.			Thence along same on a curve to the right with a radius of 380.00 feet, the chord azimuth and distance being;
	348° 00'	435.92	feet to a pipe;
13.	23° 00'	40.00	feet along same to a pipe;
14.	289° 00'	70.00	feet along same to a pipe;
15.	346° 00'	400.00	feet along same to a pipe;
16.	10° 00'	130.00	feet along same to a pipe;
17.	320° 00'	130.00	feet along same to a pipe;
18.	350° 00'	200.00	feet along same to a pipe;
19.	20° 00'	160.00	feet along same to a pipe;
20.	350° 00'	170.00	feet along same to a pipe;
21.	268° 00'	130.00	feet along same to a pipe;
22.	347° 00'	230.00	feet along same to a pipe;
23.	67° 00'	620.00	feet along same to a pipe;
24.	79° 00'	470.00	feet along same to a pipe;
25.	147° 02'	378.30	feet along Lot 2-B-3 of the Subdivision of Lot 2-B of the Land of Pulehunui to a pipe;
26.	190° 00'	223.81	feet along Lot 1 of the Pua'a Subdivision to a pipe;
27.	179° 00'	470.00	feet along same to a pipe;
28.	140° 00'	185.00	feet along same to a pipe;
29.	167° 00'	220.00	feet along same to a pipe;
30.	178° 00'	157.00	feet along same to a pipe;
31.	164° 00'	236.18	feet along same to a pipe;
32.	189° 00'	220.00	feet along same to a pipe;
33.	168° 00'	340.00	feet along same to a pipe;
34.			Thence along same on a curve to the left with a radius of 306.26 feet, the

chord azimuth and distance being:

- 145° 00' 239.33 feet to a pipe;
35. Thence along same on a curve to the right with a radius of 420.00 feet, the chord azimuth and distance being:
- 139° 19' 250.03 feet to a pipe;
36. 173° 11' 30" 663.31 feet along Lot 2-B-2 of the Subdivision of Lot 2-B of the Land of Pulehunui to the point of beginning and containing an area of 86.030 acres, more or less.

Being all of the property conveyed by the following:

Limited Warranty Deed With Reservation of Easements, Covenants, Reservations and Restrictions

Grantor: Alexander & Baldwin, Inc., a Hawaii corporation
Grantee: CMBY 2011 Investment, LLC, a Washington limited liability company
Dated: March 17, 2011
Recorded: March 17, 2011 in the Bureau of Conveyances of the State of Hawaii, as Document No. 2011-044566.

The Estate in the Land is Fee Simple.

SUBJECT TO:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. Claims arising out of rights customarily and traditionally exercise for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii revised Statutes.
3. EASEMENT (GRANT)

In Favor Of: MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as Hawaiian Telcom, Inc., a Hawaii corporation
Dated: July 9, 1991
Recorded: October 18, 1991, in the Bureau of Conveyances of the State of Hawaii, Document No. 91-142658
Purpose: granting an easement of utility and incidental purposes over, under, across and through a portion of the land herein described, designated as Easement "3",

containing an area of 1.768 acres, more or less.

4. Declaration of Conditions by and between CMBY 2011 Investment, LLC, a Washington limited liability company, and the State of Hawaii Land Use Commission

Dated: December 3, 2013

Recorded: December 6, 2013 in the Bureau of Conveyances of the State of Hawaii, as Document No. A-50880606.

5. Any facts, rights, interests or claims which a correct survey would disclose and which are not disclosed by the public records.
6. Any and all unrecorded Leases, Subleases and Tenancy Agreements demising a portion of the land herein described, and encumbrances appurtenant thereto, if any.
7. Any rights or interest which may exist or arise by reason of the following facts shown on survey map prepared by Ken T. Nomura, Land Surveyor, dated March 7, 2011:
 - (A) Portions of Existing 10 foot wide Concrete Irrigation Ditch encroaches onto Lot 2.
 - (B) Various Existing Fencelines cross over boundaries.
 - (C) Portion of Lot 2 falls in Cane Field.

as disclosed in the Deed dated March 17, 2011 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2011-044566.

END OF ITEMS

TMK: (2) 3-8-008:019

EXHIBIT "B"

CONDITIONS OF ZONING

1. That CMBY 2011 INVESTMENT, LLC, shall provide, in a timely manner, to the County of Maui Department of Planning and the Maui County Council, without any written prior notice, copies of annual reports sent to the State of Hawaii Land Use Commission in connection with the status of the development of the Petition area and Petitioner's progress in complying with the conditions imposed under Decisions and Orders for Land Use Commission Docket A13-797 approved as to form on November 22, 2013.
2. That CMBY 2011 INVESTMENT, LLC, shall provide, in a timely manner, to the Department and the Council, copies of annual compliance reports outlining the status of the project and progress in complying with the conditions of zoning, commencing one (1) year from the effective date of the ordinance and continuing until such time as the conditions have been fully satisfied, as determined by the Department and the Department of Public Works.

OF THE DOCUMENT
AS FOLLOWS:
OF HAWAII

Doc A-56300808

June 01, 2015 8:02 AM

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: 10

Affects Tax Map Key (Maui) (2) 3-8-008: 019

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 27 day of APRIL 2015, by CMBY 2011 Investment, LLC, a Washington limited liability company, whose principal place of business is located in Kihei, Maui, Hawai'i, and whose mailing address is 1300 North Holocono Street, Suite 201 (mailing address: P.O. Box 220), Kihei, Hawai'i 96753, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Pulehunui, Maui, Hawai'i, comprised of approximately 86.03 acres, and identified for real property tax purposes by Tax Map Key No(s). (2) 3-8-008:019, 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 establishment of zoning for the Parcel, comprised of approximately 86.03 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-212, 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. 15-56, 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 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 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 zoning ordinance approving the establishment of M-3 Restricted Industrial District zoning and 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 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 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, 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.

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


DECLARANT:

CMBY 2011 Investment, LLC
a Washington limited liability
company

By: JSGNE Investments, Inc.
a Washington corporation
Its Manager

By: 
Its PRESIDENT

APPROVED AS TO FORM AND LEGALITY:


MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII

)

)

SS.

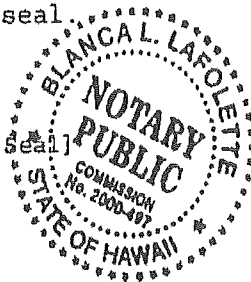
COUNTY OF MAUI

)

On this 27 day of APRIL, 2015, before me personally appeared J. STEPHEN GOODFELLOW, 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.

[Stamp or Seal]



Blanca L. Lafolette

Notary Public, State of Hawaii

Print Name: Blanca L. Lafolette

My Commission Expires: 10/15/16

NOTARY PUBLIC CERTIFICATION

Doc. Date: APRIL 27, 2015

Pages: 10

Notary Name: BLANCA L. LAFOLETTE

Judicial Circuit: SECOND

Document Description: _____

UNILATERAL AGREEMENT AND

DECLARATION FOR CONDITIONAL ZONING

Notary Signature: _____

Blanca L. Lafolette

Date: APRIL 27, 2015



EXHIBIT 1

All of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Number 8140, Land Commission Award Number 5230 to Keaweamahi) situate, lying and being at Pulehunui, District of Wailuku, Island and County of Maui, State of Hawaii, being LOT 2 of the PUA'A SUBDIVISION, per survey dated March 8, 2011, to wit:

Beginning at a pipe at the northeasterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HELE" being 2,265.99 feet north and 17,073.08 feet east and running by azimuths measured clockwise from true South:

- | | | | |
|-----|----------|--------|---|
| 1. | 199° 00' | 428.45 | feet along Lot 3 of the Pua'a Subdivision to a pipe; |
| 2. | 179° 00' | 180.00 | feet along same to a pipe; |
| 3. | 260° 00' | 50.00 | feet along same to a pipe; |
| 4. | 315° 00' | 200.00 | feet along same to a pipe; |
| 5. | | | Thence along same on a curve to the left with a radius of 515.00 feet, the chord azimuth and distance being: |
| | 299° 00' | 283.91 | feet along same to a pipe; |
| 6. | 283° 00' | 170.00 | along Lot 3 of the Pua'a Subdivision to a pipe; |
| 7. | 296° 00' | 390.00 | feet along same to a pipe; |
| 8. | | | Thence along same on a curve to the right with a radius of 362.00 feet, the chord azimuth and distance being: |
| | 345° 00' | 455.63 | feet to a pipe; |
| 9. | 24° 00' | 240.00 | feet along Lot 3 of the Pua'a Subdivision to a pipe; |
| 10. | | | Thence along same on a curve to the left with a radius of 410.00 feet, the chord azimuth and distance being: |
| | 348° 30' | 476.18 | feet to a pipe; |
| 11. | 313° 00' | 225.00 | feet along Lot 3 of the Pua'a Subdivision to a pipe; |

12.			Thence along same on a curve to the right with a radius of 380.00 feet, the chord azimuth and distance being:
	348° 00'	435.92	feet to a pipe;
13.	23° 00'	40.00	feet along same to a pipe;
14.	289° 00'	70.00	feet along same to a pipe;
15.	346° 00'	400.00	feet along same to a pipe;
16.	10° 00'	130.00	feet along same to a pipe;
17.	320° 00'	130.00	feet along same to a pipe;
18.	350° 00'	200.00	feet along same to a pipe;
19.	20° 00'	160.00	feet along same to a pipe;
20.	350° 00'	170.00	feet along same to a pipe;
21.	268° 00'	130.00	feet along same to a pipe;
22.	347° 00'	230.00	feet along same to a pipe;
23.	67° 00'	620.00	feet along same to a pipe;
24.	79° 00'	470.00	feet along same to a pipe;
25.	147° 02'	378.30	feet along Lot 2-B-3 of the Subdivision of Lot 2-B of the Land of Pulehunui to a pipe;
26.	190° 00'	223.81	feet along Lot 1 of the Pua'a Subdivision to a pipe;
27.	179° 00'	470.00	feet along same to a pipe;
28.	140° 00'	185.00	feet along same to a pipe;
29.	167° 00'	220.00	feet along same to a pipe;
30.	178° 00'	157.00	feet along same to a pipe;
31.	164° 00'	236.18	feet along same to a pipe;
32.	189° 00'	220.00	feet along same to a pipe;
33.	168° 00'	340.00	feet along same to a pipe;
34.			Thence along same on a curve to the left with a radius of 306.26 feet, the

chord azimuth and distance being:

- 145° 00' 239.33 feet to a pipe;
35. Thence along same on a curve to the right with a radius of 420.00 feet, the chord azimuth and distance being:
- 139° 19' 250.03 feet to a pipe;
36. 173° 11' 30" 663.31 feet along Lot 2-B-2 of the Subdivision of Lot 2-B of the Land of Pulehunui to the point of beginning and containing an area of 86.030 acres, more or less.

Being all of the property conveyed by the following:

Limited Warranty Deed With Reservation of Easements, Covenants, Reservations and Restrictions

Grantor: Alexander & Baldwin, Inc., a Hawaii corporation
Grantee: CMBY 2011 Investment, LLC, a Washington limited liability company
Dated: March 17, 2011
Recorded: March 17, 2011 in the Bureau of Conveyances of the State of Hawaii, as Document No. 2011-044566.

The Estate in the Land is Fee Simple.

SUBJECT TO:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. Claims arising out of rights customarily and traditionally exercise for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii revised Statutes.
3. EASEMENT (GRANT)

In Favor Of: MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as Hawaiian Telcom, Inc., a Hawaii corporation
Dated: July 9, 1991
Recorded: October 18, 1991, in the Bureau of Conveyances of the State of Hawaii, Document No. 91-142658
Purpose: granting an easement of utility and incidental purposes over, under, across and through a portion of the land herein described, designated as Easement "3",

containing an area of 1.768 acres, more or less.

4. Declaration of Conditions by and between CMBY 2011 Investment, LLC, a Washington limited liability company, and the State of Hawaii Land Use Commission

Dated: December 3, 2013

Recorded: December 6, 2013 in the Bureau of Conveyances of the State of Hawaii, as Document No. A-50880606.

5. Any facts, rights, interests or claims which a correct survey would disclose and which are not disclosed by the public records.
6. Any and all unrecorded Leases, Subleases and Tenancy Agreements demising a portion of the land herein described, and encumbrances appurtenant thereto, if any.
7. Any rights or interest which may exist or arise by reason of the following facts shown on survey map prepared by Ken T. Nomura, Land Surveyor, dated March 7, 2011:
 - (A) Portions of Existing 10 foot wide Concrete Irrigation Ditch encroaches onto Lot 2.
 - (B) Various Existing Fencelines cross over boundaries.
 - (C) Portion of Lot 2 falls in Cane Field.

as disclosed in the Deed dated March 17, 2011 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2011-044566.

END OF ITEMS

TMK: (2) 3-8-008:019

END OF EXHIBIT 1

EXHIBIT 2

CONDITIONS OF ZONING

1. That CMBY 2011 INVESTMENT, LLC, shall provide, in a timely manner, to the County of Maui Department of Planning and the Maui County Council, without any written prior notice, copies of annual reports sent to the State of Hawaii Land Use Commission in connection with the status of the development of the Petition area and Petitioner's progress in complying with the conditions imposed under Decisions and Orders for Land Use Commission Docket A13-797 approved as to form on November 22, 2013.
2. That CMBY 2011 INVESTMENT, LLC, shall provide, in a timely manner, to the Department and the Council, copies of annual compliance reports outlining the status of the project and progress in complying with the conditions of zoning, commencing one (1) year from the effective date of the ordinance and continuing until such time as the conditions have been fully satisfied, as determined by the Department and the Department of Public Works.

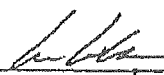
WE HEREBY CERTIFY that the foregoing BILL NO. 44 (2015)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 5th day of June, 2015, by the following vote:

Michael B WHITE Chair	Donald S GUZMAN Vice Chair	Gladys C BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G COUCH, JR	S Stacy CRIVELLO	G Riki HOKAMA	Michael P VICTORINO
Aye	Excused	Aye	Aye	Aye	Aye	Aye	Aye	Excused

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 8th day of June, 2015.

DATED AT WAILUKU, MAUI, HAWAII, this 8th day of June, 2015.

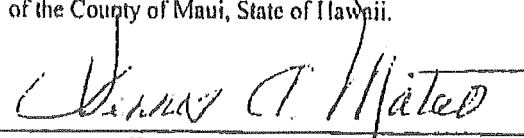

MICHAEL B. WHITE, CHAIR
Council of the County of Maui


DENNIS A. MATEO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 9 DAY OF June, 2015.


ALAN M. ARAKAWA, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4220 of the County of Maui, State of Hawaii.


DENNIS A. MATEO, COUNTY CLERK
County of Maui

Passed First Reading on May 26, 2015.
Effective date of Ordinance June 9, 2015

RECEIVED
2015 JUN 10 AM 9:39
OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4220, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

ORDINANCE NO. 4219

BILL NO. 43 (2015)

A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA
COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO
HEAVY INDUSTRIAL FOR PROPERTY SITUATED AT PULEHUNUI,
DISTRICT OF WAILUKU, MAUI, HAWAII,
TAX MAP KEY NUMBER (2) 3-8-008:019, FOR THE
PROPOSED PUUNENE HEAVY INDUSTRIAL SUBDIVISION

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

SECTION 1. Pursuant to Chapter 2.80B, Maui County Code, the Kihei-Makena Community Plan and Land Use Map is hereby amended from Agriculture to Heavy Industrial for property situated at Pulehunui, District of Wailuku, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2) 3-8-008:019, comprising approximately 86.03 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Community Plan Map No. CP-422, 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. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
LU-30 Kihei-Makena CPA 2014-3084

EXHIBIT "A"

All of that certain parcel of land (being portion of the land(s) described in and covered by Land Patent Number 8140, Land Commission Award Number 5230 to Keaweamahele) situate, lying and being at Pulehunui, District of Wailuku, Island and County of Maui, State of Hawaii, being LOT 2 of the PUA'A SUBDIVISION, per survey dated March 8, 2011, to wit:

Beginning at a pipe at the northeasterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU HELE" being 2,265.99 feet north and 17,073.08 feet east and running by azimuths measured clockwise from true South:

1. 199° 00' 428.45 feet along Lot 3 of the Pua'a Subdivision to a pipe;
2. 179° 00' 180.00 feet along same to a pipe;
3. 260° 00' 50.00 feet along same to a pipe;
4. 315° 00' 200.00 feet along same to a pipe;
5. Thence along same on a curve to the left with a radius of 515.00 feet, the chord azimuth and distance being:
299° 00' 283.91 feet along same to a pipe;
6. 283° 00' 170.00 along Lot 3 of the Pua'a Subdivision to a pipe;
7. 296° 00' 390.00 feet along same to a pipe;
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11. 313° 00' 225.00 feet along Lot 3 of the Pua'a Subdivision to a pipe;

12.			Thence along same on a curve to the right with a radius of 380.00 feet, the chord azimuth and distance being:
	348° 00'	435.92	feet to a pipe;
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14.	289° 00'	70.00	feet along same to a pipe;
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26.	190° 00'	223.81	feet along Lot 1 of the Pua'a Subdivision to a pipe;
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29.	167° 00'	220.00	feet along same to a pipe;
30.	178° 00'	157.00	feet along same to a pipe;
31.	164° 00'	236.18	feet along same to a pipe;
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chord azimuth and distance being:

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Being all of the property conveyed by the following:

Limited Warranty Deed With Reservation of Easements, Covenants, Reservations and Restrictions

Grantor: Alexander & Baldwin, Inc., a Hawaii corporation
Grantee: CMBY 2011 Investment, LLC, a Washington limited liability company
Dated: March 17, 2011
Recorded: March 17, 2011 in the Bureau of Conveyances of the State of Hawaii, as Document No. 2011-044566.

The Estate in the Land is Fee Simple.

SUBJECT TO:

1. Mineral and water rights of any nature in favor of the State of Hawaii.
2. Claims arising out of rights customarily and traditionally exercise for subsistence, cultural, religious, access or gathering purposes as provided for in the Hawaii Constitution or the Hawaii revised Statutes.
3. EASEMENT (GRANT)

In Favor Of: MAUI ELECTRIC COMPANY, LIMITED, a Hawaii corporation, and GTE HAWAIIAN TELEPHONE COMPANY INCORPORATED, now known as Hawaiian Telcom, Inc., a Hawaii corporation
Dated: July 9, 1991
Recorded: October 18, 1991, in the Bureau of Conveyances of the State of Hawaii, Document No. 91-142658
Purpose: granting an easement of utility and incidental purposes over, under, across and through a portion of the land herein described, designated as Easement "3",

containing an area of 1.768 acres, more or less.

4. Declaration of Conditions by and between CMBY 2011 Investment, LLC, a Washington limited liability company, and the State of Hawaii Land Use Commission

Dated: December 3, 2013

Recorded: December 6, 2013 in the Bureau of Conveyances of the State of Hawaii, as Document No. A-50880606.

5. Any facts, rights, interests or claims which a correct survey would disclose and which are not disclosed by the public records.
6. Any and all unrecorded Leases, Subleases and Tenancy Agreements demising a portion of the land herein described, and encumbrances appurtenant thereto, if any.
7. Any rights or interest which may exist or arise by reason of the following facts shown on survey map prepared by Ken T. Nomura, Land Surveyor, dated March 7, 2011:
 - (A) Portions of Existing 10 foot wide Concrete Irrigation Ditch encroaches onto Lot 2.
 - (B) Various Existing Fencelines cross over boundaries.
 - (C) Portion of Lot 2 falls in Cane Field.

as disclosed in the Deed dated March 17, 2011 and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 2011-044566.

END OF ITEMS

TMK: (2) 3-8-008:019


WE HEREBY CERTIFY that the foregoing BILL NO. 43 (2015)

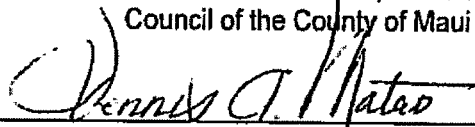
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 5th day of June, 2015, by the following vote:

Michael B WHITE Chair	Donald S GUZMAN Vice-Chair	Gladya C BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G COUCH, JR.	S. Stacy CRIVELLO	G Riku HOKAMA	Michael P VICTORINO
Aye	Excused	Aye	Aye	Aye	Aye	Aye	Aye	Excused

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 8th day of June, 2015.

DATED AT WAILUKU, MAUI, HAWAII, this 8th day of June, 2015.


MICHAEL B. WHITE, CHAIR
Council of the County of Maui


DENNIS A. MATEO, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 9 DAY OF June, 2015.


ALAN M. ARAKAWA, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 4219 of the County of Maui, State of Hawaii.


DENNIS A. MATEO, COUNTY CLERK
County of Maui

Passed First Reading on May 26, 2015.

Effective date of Ordinance June 9, 2015

RECEIVED
2015 JUN 10 AM 9:39
OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 4219, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui