

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

April 24, 2015

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Molokai

Consent to Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment; Related to Governor's Executive Order No. 4411 to the Department of Education; Hoolehua, Molokai, TMK: (2)5-2-015:001.

CONTROLLING AGENCY:

Department of Education

LEGAL REFERENCE:

Sections 171-11 and 205-3.1(c), Hawaii Revised Statutes, as amended; Maui County Code of Ordinances Chapter 19.68.

LOCATION:

Portion of Government lands situated at Hoolehua, Molokai, identified by Tax Map Key: (2) 5-2-015:001, as shown on the attached map labeled Exhibit A.

AREA:

22.4 acres, more or less.

CHARACTER OF USE:

Governor's Executive Order No. 4411 to the Department of Education for School and Allied purposes.

ZONING:

State Land Use District: Agriculture and Urban
County of Maui CZO: Interim and Agriculture

TRUST LAND STATUS:

Acquired after August, 1959

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

The controlling agency shall be responsible for ensuring compliance with Chapter 343, HRS.

REMARKS:

The Department of Education is requesting that the County of Maui reclassify land use designations that encumber school property in order to allow for necessary structural improvements that shall serve the educational needs of Molokai High and Middle Schools (Exhibit D). In order to implement necessary structural improvements, portions of the land and its authorized uses need to be reclassified in order to maintain consistent zoning, community plan designations and land use district boundaries. Changes include the following (Exhibit C):

1. Amend the Molokai Community Plan and Land Use Map from Agriculture to Public/Quasi-Public for approximately 4.410 acres located adjacent to Farrington Avenue, Hoolehua, Molokai, Hawaii, portion of TMK: (2) 5-2-015:001, to facilitate development of upgrades to Molokai High School, including construction of science facilities ("Project");
2. Amend the State Land Use District Classification from Agricultural to Urban District (Conditional Boundary Amendment) for approximately 5.766 acres located adjacent to Farrington Avenue, Hoolehua, Molokai, Hawaii, portion of TMK: (2) 5-2-015:001, to facilitate development of the Project;
3. Change zoning from Interim District to P-1 Public/Quasi-Public District for 16.654 acres, a portion of TMK: (2) 5-2-015:001; and from Agricultural District to P-1 Public/Quasi-Public District for 4.410 acres, a portion of TMK: (2) 5-2-015:001 for property situated at Hoolehua, Molokai.

As part of the land re-classifications, the County of Maui is requiring 2 conditions be attached to the State Land Use District Boundary Amendment (Exhibit E).

The first condition prohibits any action on the school property that would interfere with or restrain farming operations on adjacent lands. At this time, adjacent / abutting lands include the Hoolehua Fire Sub-Station, the Lanikeha Community Center and Park, and DHHL's Hoolehua Residence Lots.

Molokai High and Intermediate School has been on the property for over 60 years. Curriculum continues to include small scale agricultural activities that if anything are compatible with this condition rather than in conflict with it.

There was no opposition to the proposed land use changes at the Molokai Planning Commission meeting on November 12, 2014.

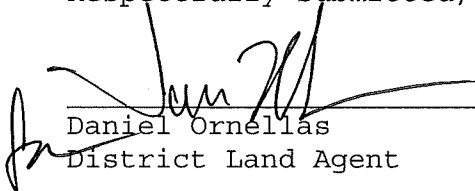
The second condition relates to when/if consideration is ever given to selling the school property - then the land owner is required to notify all potential buyers that the property abuts agricultural land and farming operations and practices there are protected under the Hawaii Right to Farm Act.

RECOMMENDATION:

That the Board consent to the Unilateral Agreement between the County of Maui and the Department of Education, and Declaration of Conditions for State Land Use District Boundary Amendment Related to Governor's Executive Order No. 4411, subject to any applicable conditions cited above which are by this reference incorporated herein and further subject to the following:

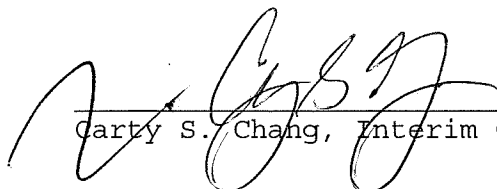
1. Review and approval by the Department of the Attorney General; and
2. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

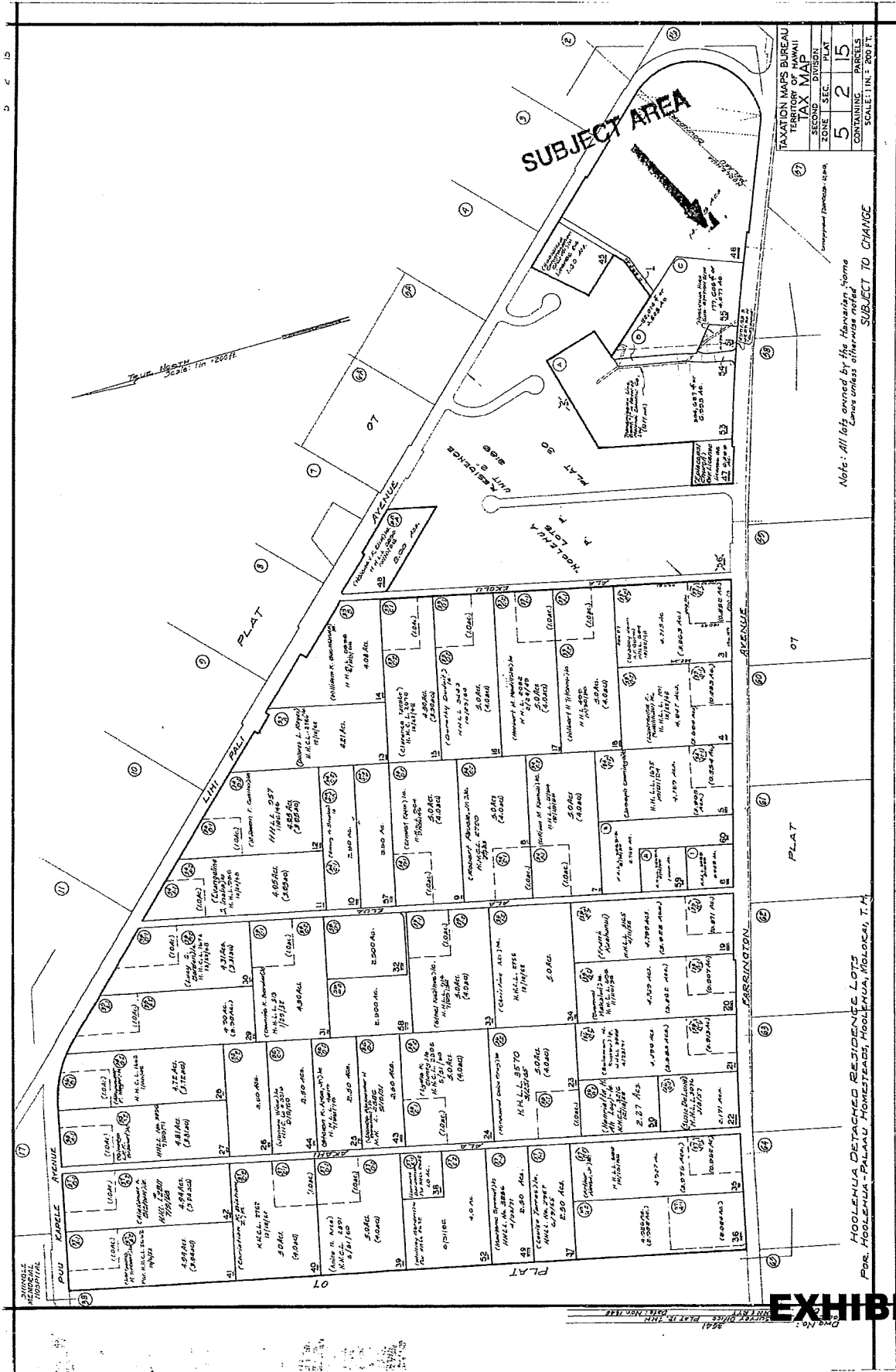


Daniel Ornellas
District Land Agent

APPROVED FOR SUBMITTAL:



Carty S. Chang, Interim Chairperson

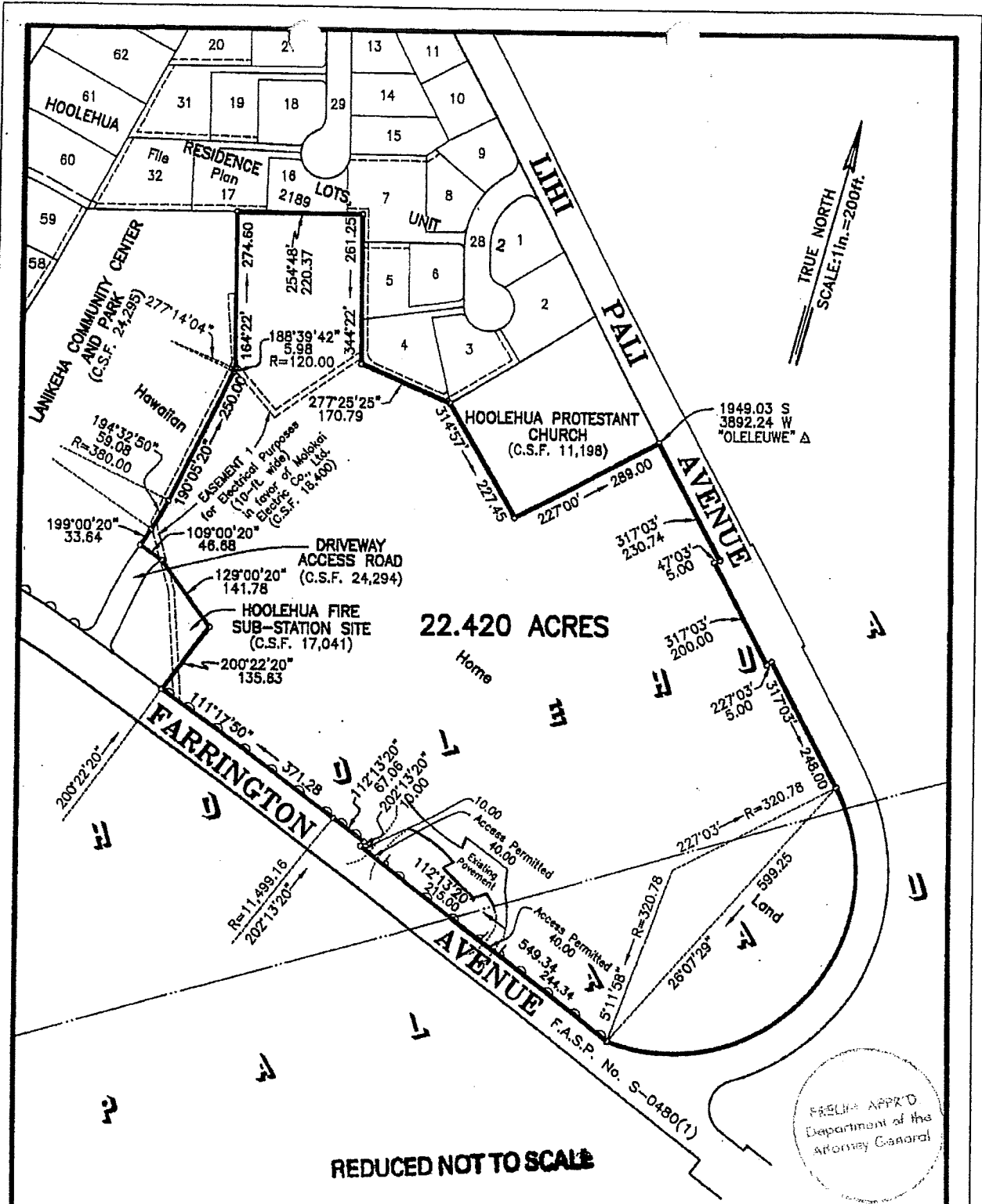


TAXATION MAPS BUREAU
 TERRITORY MAP
 TAX MAP
 SECOND DIVISION
 ZONE SEC. PLAT
 5 2 15
 CONTAINING PARCELS
 SCALE: 1 IN. = 200 FT.

Note: All lots owned by the Hawaiian Home
 Loans unless otherwise noted
 SUBJECT TO CHANGE

HOOLENUA DETACHED RESIDENCE LOTS
 FOR HOOLENUA-PALAU HOMESTEADS, HOOLENUA, MOLOKAI, T.H.

EXHIBIT A



REDUCED NOT TO SCALE

MOLOKAI HIGH AND INTERMEDIATE SCHOOL

Hoolehua and Palaau, Molokai, Hawaii

Scale: 1 Inch = 200 feet

Exhibit B

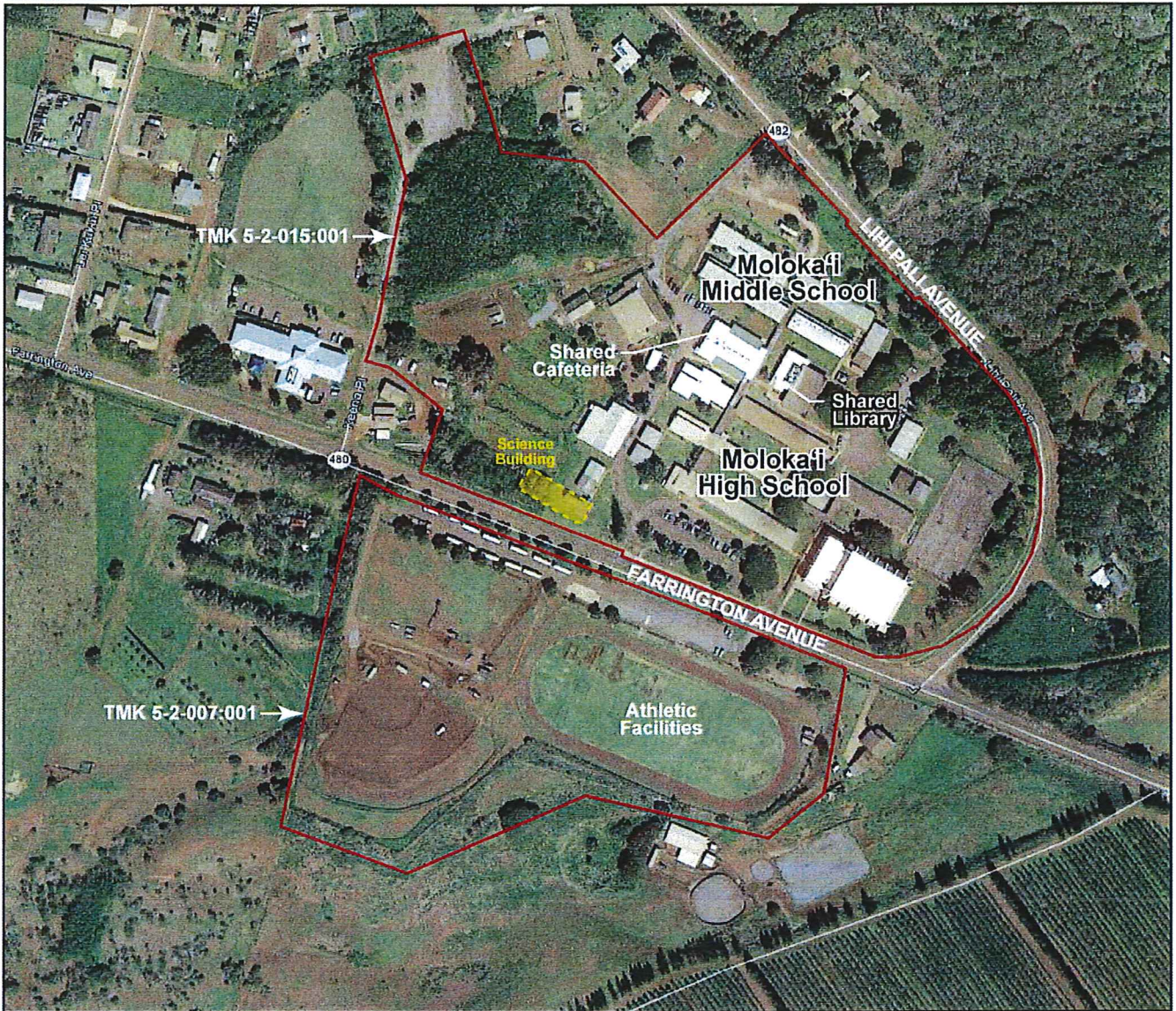
JOB Mo-281(04)
Mo-299(06)
C. BK.

Denotes access permitted
 Denotes no vehicle access permitted

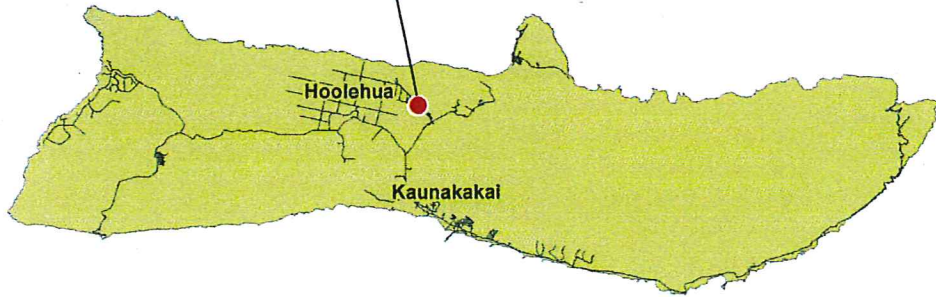
TAX MAP: 5-2-15
5-2-30
C.S.F. NO. 24,293

SURVEY DIVISION
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
STATE OF HAWAII

JGL July 6, 2008



Moloka'i High School

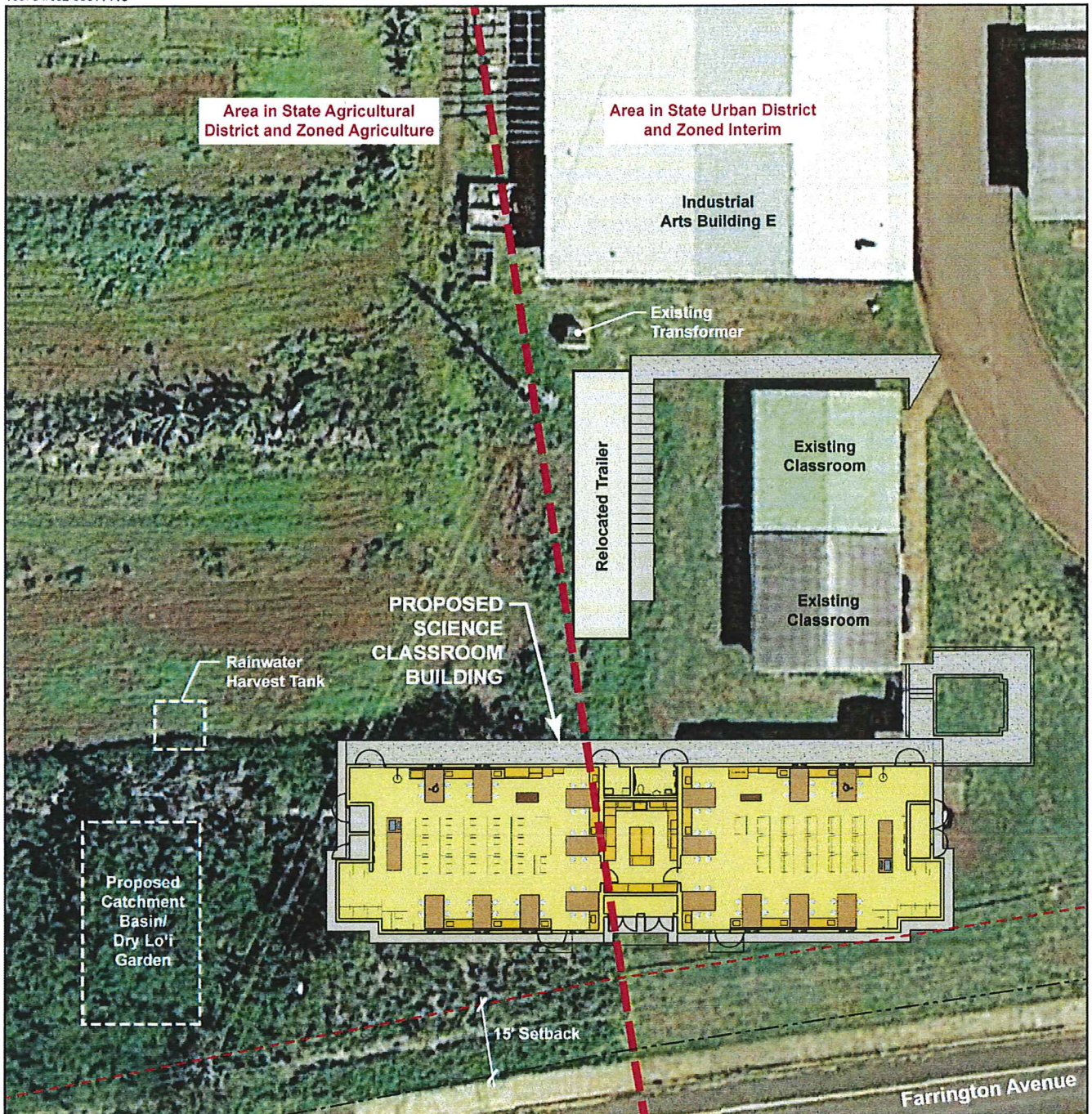


Island of Moloka'i



Figure 1
LOCATION MAP
 Moloka'i High School Science Facility Upgrades

EXHIBIT "C"



Source: CDS International

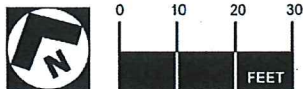
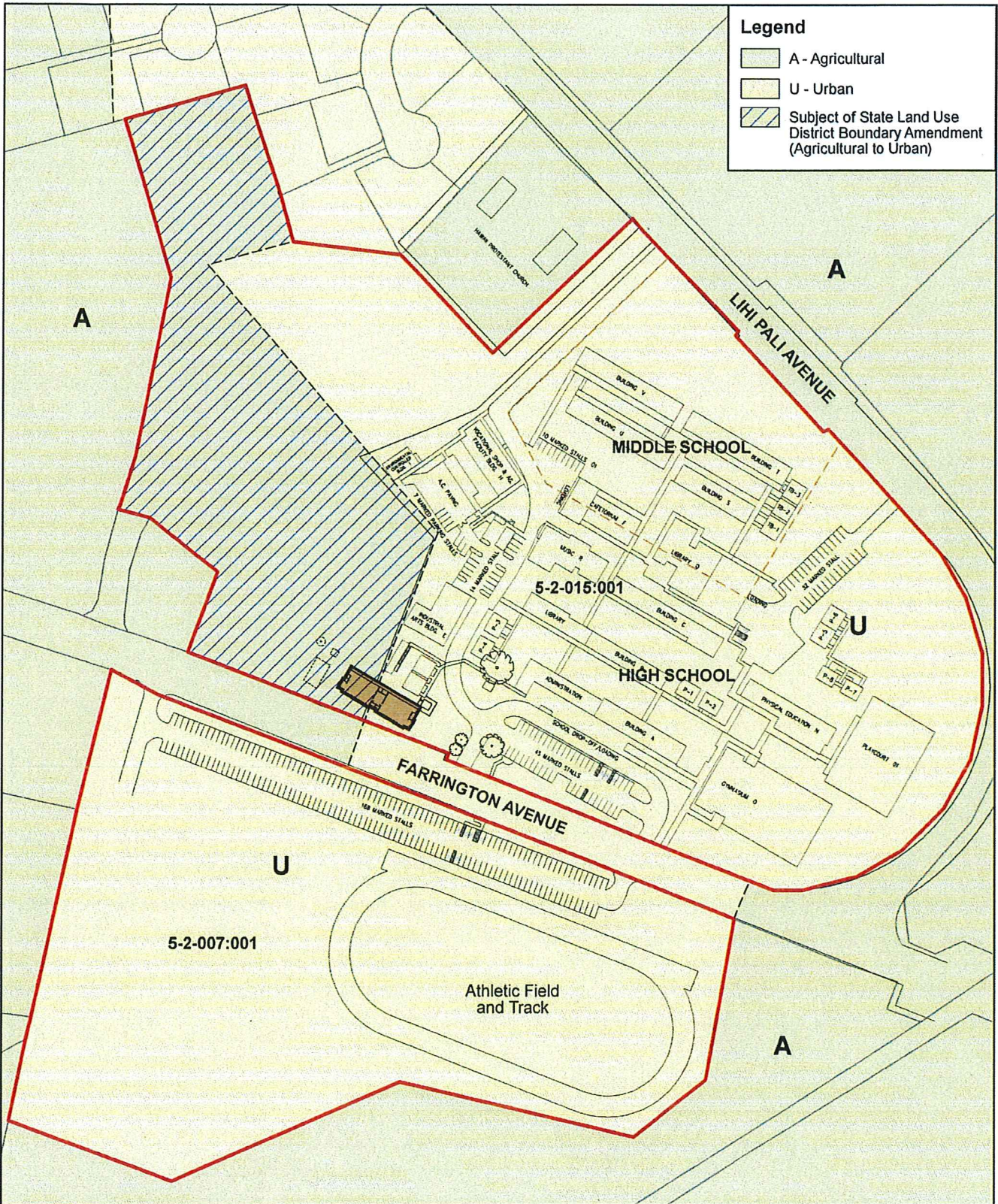


Figure 2
SITE PLAN
Moloka'i High School Science Facility Upgrades

EXHIBIT "C"



Legend

- A - Agricultural
- U - Urban
- Subject of State Land Use District Boundary Amendment (Agricultural to Urban)

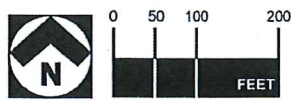
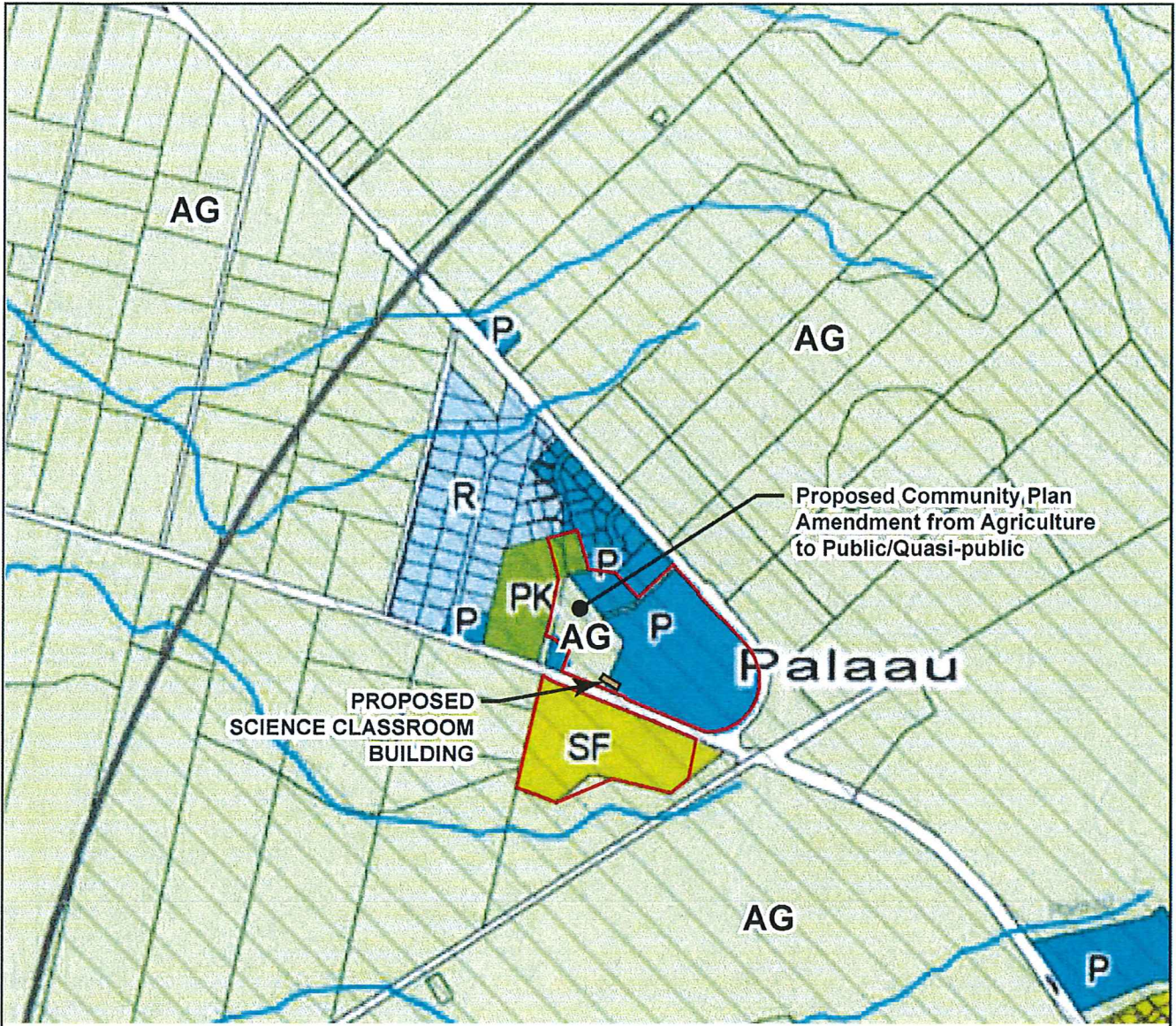


Figure 3
STATE LAND USE DISTRICTS
Molokai High School Science Facility Upgrades

EXHIBIT "C"



LEGEND

- SF Single Family
- AG Agriculture
- R Rural
- P Public/Quasi-public
- PK Park
- Wellhead Protection Buffer

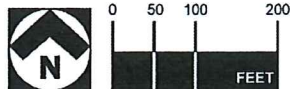


Figure 4
MOLOKAI COMMUNITY PLAN
Molokai High School Facility Upgrades

EXHIBIT "C"

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

November 26, 2014

Mr. Glenn Kimura
Kimura International, Inc.
1600 Kapiolani Boulevard, Suite 160
Honolulu, Hawaii 96814

Dear Mr. Kimura:

SUBJECT: APPROVAL RECOMMENDATION TO THE MAUI COUNTY COUNCIL OF A COMMUNITY PLAN AMENDMENT (CPA), STATE LAND USE DISTRICT BOUNDARY AMENDMENT (DBA), AND A CHANGE IN ZONING (CIZ) FOR THE MOLOKAI HIGH SCHOOL SCIENCE FACILITY UPGRADES, THE CONSTRUCTION OF A SINGLE 4,500 SQUARE FOOT (SQ. FT.) STRUCTURE WITH TWO (2) SCIENCE CLASSROOM LABS EACH 1,750 SQ. FT. WITH A THREE HUNDRED (300) SQ. FT. SHARED TEACHER PREPATION STOREROOM AND RAINWATER HARVEST TANK AND CATCHMENT BASINS AT 2140 FARRINGTON AVENUE, HOOLEHUA, MOLOKAI, HAWAII; TMK: (2) 5-2-015:001 AND 007 (CPA 2014/0001) (DBA 2014/0001) (CIZ 2014/0001)

At its regularly scheduled meeting on November 12, 2014, the Molokai Planning Commission (Commission) reviewed the above-referenced project. After due deliberation, receipt of public testimony, and agency comments, the Commission adopted the Department of Planning (Department) Report and Recommendation prepared for the November 12, 2014 meeting as its Findings of Fact, Conclusions of Law, and Decision and Order, and voted to recommend approval to the Maui County Council a CPA, State Land Use DBA, and a CIZ, subject to the following conditions:

STATE LAND USE DISTRICT BOUNDARY AMENDMENT DBA (DBA 2014/0001)

Standard Conditions

1. That there shall be prohibition on any action that would interfere with or restrain farming operations adjacent to the 34.21 acre parcel; 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.

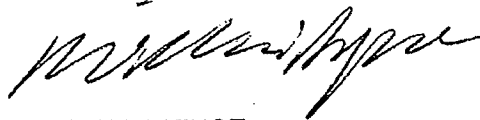
EXHIBIT "D"

Mr. Glenn Kimura
November 26, 2014
Page 2

2. That there shall be notification to all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under Chapter 165, Hawaii Revised Statutes, the Hawaii Right to Farm Act, and that the notice shall be included in any disclosures required for the sale or transfer of real property or any interest in real property.

Thank you for your patience and cooperation. If additional clarification is required, please contact Staff Planner Benjamin Sticka at benjamin.sticka@mauicounty.gov or by phone at (808) 270-7520. Ben wishes to express that it has been a pleasure to work with you.

Sincerely,



WILLIAM SPENCE
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Jeffrey P. Dack, Current Planning Supervisor (PDF)
Benjamin T. Sticka, Staff Planner (PDF)
Suzette Esmeralda, Secretary to Boards and Commissions (PDF)
Nina-Lehua Kawano, Molokai Clerk (PDF)
State Land Use Commission
Project File
General File

WRS:BTS:nlk:nst

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EXHIBIT "D"

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail () Pickup () To:
Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Total Number of Pages: 9

Affects Tax Map Key (Maui) (2)5-2-015:001 (por.)

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

THIS INDENTURE, made this ___ day of _____, by the State of Hawaii, through the Board of Land and Natural Resources, whose principal place of business is located in Honolulu, Oahu, Hawaii, and whose mailing address is 1151 Punchbowl Street, Honolulu, Hawaii, 96813, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Hoolehua and Palaau, Moloka'i, Hawai'i, comprised of approximately 5.766 acres and identified for real property tax purposes by Tax Map Key No. (2) 5-2-015:001 (por.), hereinafter referred to as "PARCEL" (or "PROPERTY").

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i, hereinafter referred to as "Council", is considering the Declarant's Petition ("Petition") for a State Land Use District Boundary Amendment for the Parcel, comprising approximately 5.766 acres, more or less, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and which is more particularly

identified in Land Use District Boundary Amendment Map No. DB - 108, 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 said State Land Use District Boundary Amendment for the Parcel be approved for passage on first reading subject to certain conditions pursuant to Section 19.68.040, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the State Land Use District Boundary Amendment provisions of Section 19.68.040, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.68.040, Maui County Code, relating to State Land Use District Boundary Amendments;

2. That until written release by the County of Maui, the Parcel, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which shall be effective as to and shall run with the land as to the Parcel, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawai'i, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Parcel by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Parcel the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions, and restrictions of this Declaration;

3. That this Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the Declarant notifies the appropriate County Department that any of said covenants, conditions and restrictions are satisfied

by the Declarant, and the appropriate County Department verifies the satisfaction and provides a written release of the covenant, condition or restriction;

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

5. That the Declaration shall become fully effective on the effective date of the ordinance approving the establishment of the Urban State Land Use District Boundary Amendment 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 State Land Use District Boundary Amendment ordinance; and

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 the 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.

(Balance of this page is intentionally left blank - signature page follows:)

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

DECLARANT:

Board of LAND AND NATURAL RESOURCES

By _____

Its Chairperson

APPROVED AS TO FORM:

Deputy Attorney General

APPROVED AS TO FORM AND LEGALITY:

Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF HONOLULU)

On this ___ day of _____, _____, before me personally appeared _____, to me personally known who being by me duly sworn, did say that he is the _____ of the **BOARD OF LAND AND NATURAL RESOURCES** and that said instrument was signed and sealed on behalf of said organization/corporation or by authority of its Board of Directors, and the said Office acknowledged said instrument to be the free act and deed of said organization/corporation.

Print Name:
Notary Public, State of Hawaii

My Commission expires:

Doc. Date: _____	# of Pages: _____
Notary name: _____	
_____ Circuit	
Doc. Description:	

_____ (Stamp or Seal)	

_____ Notary Signature	_____ Date
NOTARY CERTIFICATION	

EXHIBIT 1

DESCRIPTION

MOLOKAI HIGH AND INTERMEDIATE SCHOOL
Agricultural (A) to Urban (U)
(for State Zoning Purposes)
Portion of Parcel 1

Being portions of Lot 31 and Lot 32 of the Hawaiian Home Lands of Hoolehua and Palaau situated in Hoolehua, Island of Molokai, County of Maui, State of Hawaii.

Beginning at the South corner of this parcel on the Northerly side of Farrington Avenue [Federal Aid Secondary Project No. S-0480(1)], the coordinates of said point of beginning referred to Government Survey Triangulation Station "OLELEUWE" being:

2,712.95 feet South

4,330.96 feet West

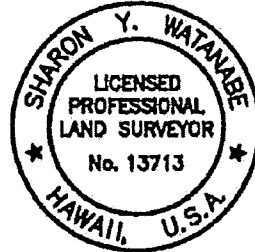
and running by azimuths measured clockwise from True South:

1. Thence along the Northerly side of Farrington Avenue [Federal Aid Secondary Project No. S-0480(1)] on a curve to the left with a radius of 11,499.16 feet, the radial azimuth from the radius point to the beginning of the curve being: 201° 50' 36"; the radial azimuth from the radius point to the end of the curve being: 200° 22' 20"; and the chord azimuth and distance being: 111° 06' 28" 295.24 feet;
2. 200° 22' 20" 135.63 feet along the remainder of Lot 31 of the Hawaiian Home Lands of Hoolehua and Palaau;
3. 129° 00' 20" 141.78 feet along the remainders of Lot 31 and Lot 32 of the Hawaiian Home Lands of Hoolehua and Palaau;
4. 109° 00' 20" 46.68 feet along the remainder of Lot 32 of the Hawaiian Home Lands of Hoolehua and Palaau;
5. 199° 00' 20" 33.64 feet along same;
6. Thence along same on a curve to the left with a radius of 380.00 feet, the chord azimuth and distance being: 194° 32' 50" 59.08 feet;
7. 190° 05' 20" 250.00 feet along same;

8. Thence along same on a curve to the left with a radius of 120.00 feet, the radial azimuth from the radius point to the end of the curve being: 277° 14' 04"; and the chord azimuth and distance being: 188° 39' 42" 5.98 feet;
9. 164° 22' 274.60 feet along same;
10. 254° 48' 220.37 feet along Lot 17, Lot 16, and Lot 7 of Hoolehua Residence Lots, Unit 2 (File Plan 2189), being also the remainder of Lot 32 of the Hawaiian Home Lands of Hoolehua and Palaau;
11. 344° 22' 261.25 feet along Lot 7, Lot 5, and Lot 4 of Hoolehua Residence Lots, Unit 2 (File Plan 2189), being also the remainders of Lot 32 and Lot 31 of the Hawaiian Home Lands of Hoolehua and Palaau;
12. 71° 20' 146.40 feet along the remainders of Lot 31 and Lot 32 of the Hawaiian Home Lands of Hoolehua and Palaau;
13. 319° 11' 340.20 feet along the remainders of Lot 32 and Lot 31 of the Hawaiian Home Lands of Hoolehua and Palaau;
14. 317° 53' 205.09 feet along the remainder of Lot 31 of the Hawaiian Home Lands of Hoolehua and Palaau;
15. 21° 58' 316.07 feet along same to the point of beginning and containing an area of 5.766 Acres.

Vehicle access will not be permitted into and from Farrington Avenue [Federal Aid Secondary Project No. S-0480(1)] over and across Course 1 of the above-described portion of Parcel 1.

This work was prepared by me
or under my supervision.



FUKUMOTO ENGINEERING, INC.

Sharon Y. Watanabe

Sharon Y. Watanabe
Licensed Professional Land Surveyor
Certificate Number 13713
License Expires: 4/30/16

1721 Wili Pa Loop, Suite 203
Wailuku, Hawaii 96793
January 5, 2015

CDS101

EXHIBIT "2"

CONDITIONS

1. That there shall be a prohibition on any action that would interfere with or restrain farming operations adjacent to TMK: (2) 5-2-015:001; 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 there shall be notification to all prospective developers or purchasers of land or interest in land in the petition area and subsequent notification to lessees or tenants of land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under Chapter 165, Hawaii Revised Statutes, the Hawaii Right to Farm Act, and that the notice shall be included in any disclosures required for the sale or transfer of real property or any interest in real property.