

COUNCIL OF THE COUNTY OF MAUI

HOUSING AND LAND USE COMMITTEE

November 26, 2024

**Committee
Report No.** _____

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

Chair and Members:

Your Housing and Land Use Committee, having met on August 21, 2024, makes reference to the following:

1. Bill 29 (2024), entitled “A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII TAX MAP KEY (2) 3-9-001:034.”

Bill 29’s purpose is to grant a District Boundary Amendment from Agricultural District to Urban District for 14.626 acres located at 454 Ohukai Road, Kihei, Maui, Hawai‘i, identified for real property tax purposes as tax map key (2) 3-9-001:034 (por.), for the development of Ohukai Light Industrial Park.

2. Bill 30 (2024), entitled “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM RURAL TO M-1 LIGHT INDUSTRIAL (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII TAX MAP KEY (2) 3-9-001:034.”

Bill 30’s purpose is to change the zoning from County Rural District to M-1 Light Industrial District (Conditional Zoning) for 14.626 acres located at 454 Ohukai Road, Kihei, Maui, Hawai‘i, identified for real property tax purposes as tax map key (2) 3-9-001:034 (por.), for the development of Ohukai Light Industrial Park.

COUNCIL OF THE COUNTY OF MAUI

HOUSING AND LAND USE COMMITTEE

Page 2

**Committee
Report No.** _____

Your Committee notes the land use designations for the subject property are as follows:

- State Land Use District: Agricultural District
- Maui Island Plan: Urban Growth Boundary/Outside Protected Areas
- Kīhei-Mākena Community Plan: Light Industrial District
- County Zoning: County Rural District
- Other: Outside of the Special Management Area

Your Committee notes that the Maui Planning Commission, at its meeting of June 13, 2023, recommended approval of the requested District Boundary Amendment and Change in Zoning (Conditional Zoning).

Your Committee received a presentation from a representative of Christopher and Candice Hayes (“Applicants”), including an overview and history of the subject property and the Applicants’ intended uses for the property.

The representative explained that the M-1 Light Industrial District uses on the property could support August 2023 wildfire recovery efforts by providing a location for material and equipment storage.

After reviewing the Maui Planning Commission’s report and consulting with the representative, your Committee voted to create a revised zoning condition in Bill 30 to read as follows:

7. Any use permitted in the M-1 Light Industrial District solely because it is a permitted use in a B-1, B-2, or B-3 Business District is prohibited. All other permitted uses in the M-1 Light Industrial District are allowed. Where overlap between the permitted uses in one of the

COUNCIL OF THE COUNTY OF MAUI

HOUSING AND LAND USE COMMITTEE

Page 3

**Committee
Report No.** _____

business districts and the other the M-1 Light Industrial District use occurs, the use is allowed.

By correspondence dated June 27, 2024, the Planning Director provided information on the bills. She explained that if the District Boundary Amendment is granted, Section 205-3.5, Hawai'i Revised Statutes, would apply because the property is adjacent to lands in the Agricultural District. That statute requires conditions to support farming. As a result, your Committee supported adding conditions to Bill 29 to:

1. Prohibit actions that would interfere with farming operations on adjacent or contiguous property in the Agricultural District.
2. Require notifications and disclosures about the Right to Farm Act.

The Director's correspondence also provided more information on a proposed zoning condition to require that the Applicants provide lease information to the Council while Bill 30 was under consideration. A Deputy Corporation Counsel clarified conditions are fulfilled after a Change in Zoning is approved, not during consideration of it. Your Committee therefore recommended deleting the proposed zoning condition.

The Director of Public Works said the Department was satisfied with the Change in Zoning conditions on traffic improvements and pedestrian safety.

Your Committee notes granting the District Boundary Amendment and Change in Zoning would:

- "Promote an economic climate that will encourage diversification of the County's economic base and a sustainable rate of growth" by supporting "economic decisions that create long-term benefits" and "private entities that assist entrepreneurs in

COUNCIL OF THE COUNTY OF MAUI

HOUSING AND LAND USE COMMITTEE

Page 4

**Committee
Report No.** _____

establishing locally operated businesses.” (Countywide Policy Plan, page 60)

- “Provide for limited expansion of light industrial services in the area south of Ohukai and mauka of Pi‘ilani Highway.” (Kihei-Makena Community Plan (1998), page 18)

Your Committee voted 7-0 to recommend passage of Bill 29, CD1 (2024), on first reading and recordation of the Unilateral Agreement. Committee Chair Kama, Vice-Chair Cook, and members Lee, Paltin, Rawlins-Fernandez, Sugimura, and U‘u-Hodgins voted “aye.” Committee members Johnson and Sinenci were excused.

Your Committee voted 6-0 to recommend passage of Bill 30, CD1 (2024), on first reading and recordation of the Unilateral Agreement. Committee Chair Kama, Vice-Chair Cook, and members Lee, Paltin, Rawlins-Fernandez, and Sugimura voted “aye.” Committee members Johnson, Sinenci, and U‘u-Hodgins were excused.

Your Committee is in receipt of the following from the Department of the Corporation Counsel, incorporating your Committee’s recommended revisions and nonsubstantive revisions:

1. Bill 29, CD1 (2024), entitled “A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL DISTRICT BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT KĪHEI, MAUI, HAWAI‘I, PORTION OF TAX MAP KEY (2) 3-9-001:034”; and
2. Bill 30, CD1 (2024), entitled “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM COUNTY RURAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KĪHEI, MAUI, HAWAI‘I, PORTION OF TAX MAP KEY (2) 3-9-001:034.”

COUNCIL OF THE COUNTY OF MAUI

HOUSING AND LAND USE COMMITTEE

Page 5

**Committee
Report No.** _____

Your Committee is also in receipt of the following, approved as to form and legality by the Department of the Corporation Counsel:

1. A signed Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment; and
2. A signed Unilateral Agreement and Declaration for Conditional Zoning.

Your Housing and Land Use Committee RECOMMENDS the following:

1. That Bill 29, CD1 (2024), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT (CONDITIONAL DISTRICT BOUNDARY AMENDMENT) FOR PROPERTY SITUATED AT KĪHEI, MAUI, HAWAI‘I, PORTION OF TAX MAP KEY (2) 3-9-001:034," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That Bill 30, CD1 (2024), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM COUNTY RURAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KĪHEI, MAUI, HAWAI‘I, PORTION OF TAX MAP KEY (2) 3-9-001:034," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
3. That the County Clerk RECORD the Unilateral Agreements.

COUNCIL OF THE COUNTY OF MAUI
HOUSING AND LAND USE COMMITTEE

Page 6

**Committee
Report No.** _____

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



TASHA KAMA, Chair

hlu:cr:24027aa:jgk

ORDINANCE NO. _____

BILL NO. 29, CD1 (2024)

**A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT
CLASSIFICATION FROM AGRICULTURAL DISTRICT TO URBAN DISTRICT
(CONDITIONAL DISTRICT BOUNDARY AMENDMENT)
FOR PROPERTY SITUATED AT KĪHEI, MAUI, HAWAI‘I,
PORTION OF TAX MAP KEY (2) 3-9-001:034**

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

SECTION 1. Under Section 205-3.1, Hawai‘i Revised Statutes, and Chapter 19.68, Maui County Code, the State Land Use District classification is reclassified from Agricultural District to Urban District (Conditional District Boundary Amendment) for real property situated in Kīhei, Maui, Hawai‘i, comprising 14.626 acres, identified for real property tax purposes as a portion of tax map key (2) 3-9-001:034, and more particularly described in and attached as Exhibit “A,” and in Land Use District Boundary Amendment Map 416, attached as Exhibit “B.”

SECTION 2. Under Section 19.68.040, Maui County Code, the State Land Use District classification granted by this Ordinance is subject to the conditions in Exhibit “C,” as attached, and the Unilateral Agreement and Declaration of Conditions for State Land Use District Boundary Amendment, attached as Exhibit “D.”

SECTION 3. This Ordinance takes effect on approval.

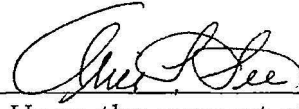
APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

**Department of the Corporation Counsel
County of Maui**

hlu:misc:027adbabil02:jgk

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Greg K. Lee". The signature is written in black ink and is positioned above a horizontal line.

Upon the request of the Mayor.

EXHIBIT "A"

LAND DESCRIPTION

WAIAKOA MAKAI HOMESTEADS SUBDIVISION, LOT 10 (PORTION)

For Zoning Change purposes affecting a portion of Lot 10 of the Waiakoa Makai Homesteads Subdivision, Tax Map Key: (2) 3-9-001:034.

All of that certain parcel of land (being a portion of Land Patent Grant 11,400 to Ernest Kia Naeole) situated at Waiakoa, Kula, Maui, Hawaii, being Lot 10 of "Waiakoa Makai Homesteads", and described as:

Beginning at the Southwest corner of this land, being also the Southeast Corner of Lot 9, the coordinates referred to Reference Point "KALAEPOHAKU" on the boundary of Pulehunui and Waiakoa being 3,154.90 feet south and 4,012.70 feet East, and said "KALAEPOHAKU" is 17,875.50 feet North and 25,734.00 feet West of Government Survey Triangulation Station "PUU O KALI" as shown on Government Survey Registered Map 2416, and running by azimuths measured clockwise from True South thence:

1. 176° 45' 1,241.50 feet along Lot 9; thence,
2. 263° 17' 47.00 feet along Ohukai Street; thence,
3. 277° 14' 483.71 feet along same; thence,
4. 356° 45' 1186.45 feet along portion of Lot 10 of the Waiakoa Makai Homesteads Subdivision, Tax Map Key: (2) 3-9-001:034; thence,
5. 90° 03' 523.42 feet along the easterly boundary of Lot 1-A-1 of the Kihei Commercial Subdivision, Tax Map Key: (2) 3-9-045:022 to the point of beginning, containing an area of 14.626 Acres, more or less.

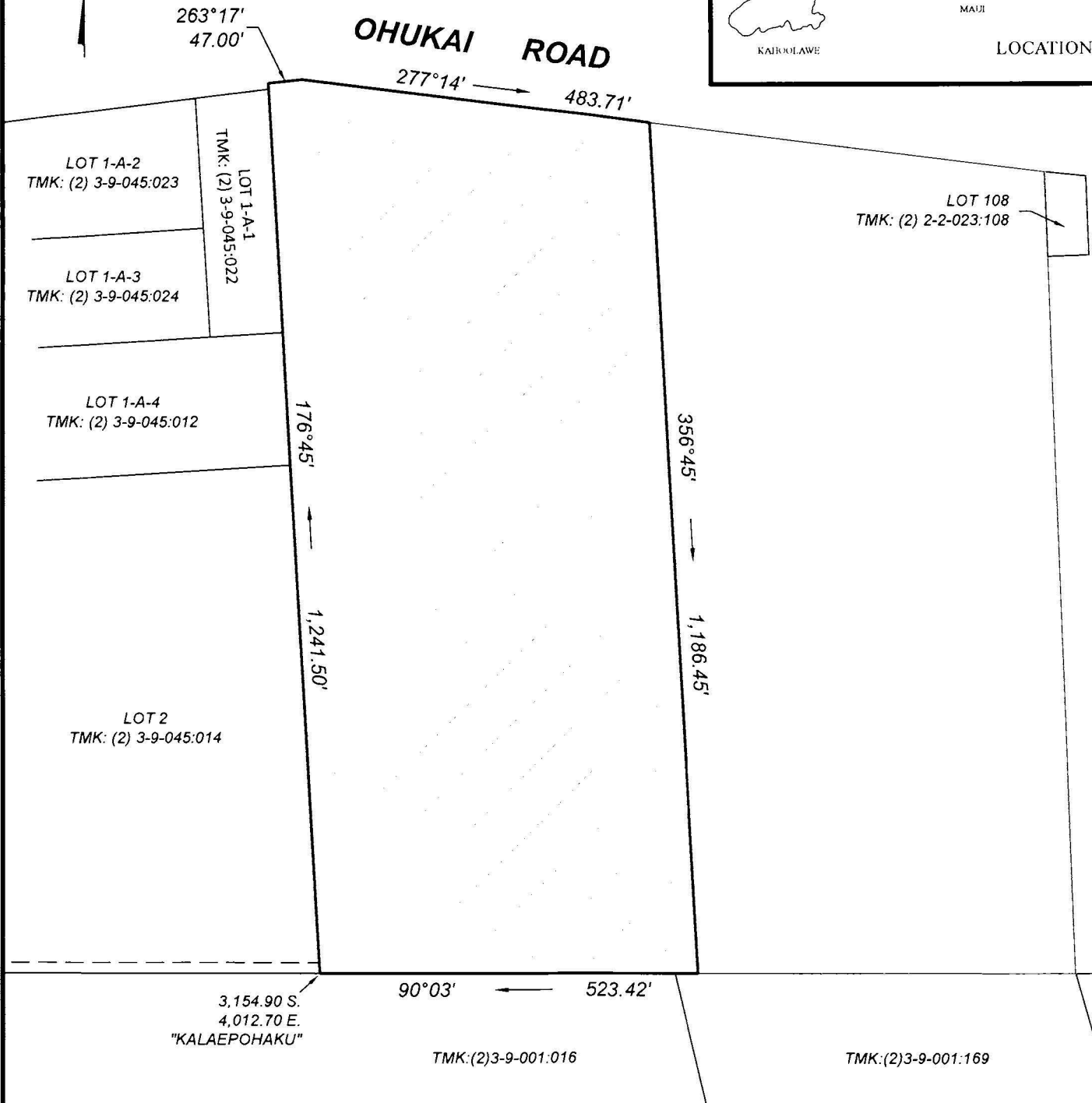
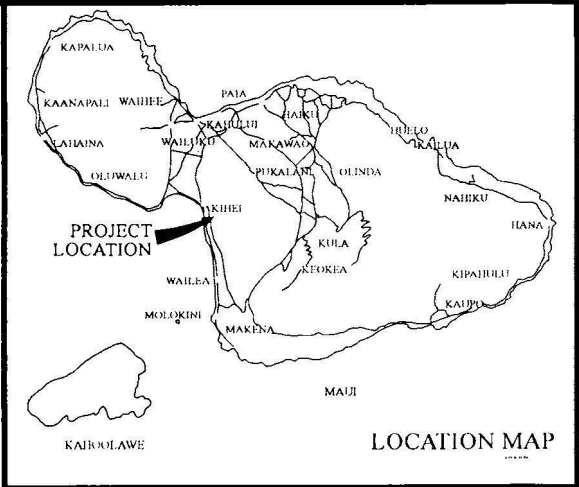
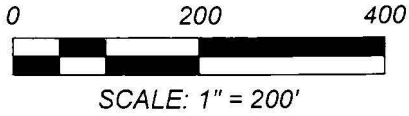
This description was prepared by me or under my direct supervision.



Leslie K.T. Lau
Registered Professional Land Surveyor
State of Hawaii Certificate No. LS12978
Expiration Date: 30 April 2024
ACTION SURVEY, LLC



EXHIBIT "B"



LAND USE DISTRICT BOUNDARY AMENDMENT MAP NO. 416

DISTRICT BOUNDARY AMENDMENT - WAIAKOA, KULA MAUI HAWAII

T.M.K.: (2) 3-9-001:034 (Por.)

FROM AGRICULTURAL TO URBAN

AREA: 14.626 AC.

Exhibit “C”

As used in these conditions, “petition area” means the 14.626-acre portion of tax map key (2) 3-9-001:034.

1. There shall be a prohibition on any action that would interfere with or restrain farming operations adjacent to the petition area 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. 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.

EXHIBIT "D"

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: 8

(Including exhibits, notary certification pages, and all other components)

Affects Tax Map Key (2) 3-9-001:034 (portion)

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

THIS INDENTURE, referred to as "***Declaration***" or "***Unilateral Agreement***," is made this 23rd day of October, 2024 by the following "Declarant," who is the owner of that certain 14.626-acre portion of real property located at 454 Ohukai Road, Kihei, Hawai'i, 96753, identified for real property tax purposes as tax map key: (2) 3-9-001:034. ("Property").

The Declarant is Christopher Robert Hayes and Candice Cay Hayes, together as husband and wife, whose principal address is at 454 Ohukai Road, Kihei, Hawai'i, and any of their successors.

WITNESSETH:

WHEREAS, the Council is considering the Declarant's Petition ("***Petition***") for a State Land Use District Boundary Amendment for the Property, described in Exhibit "1" and more particularly identified in Exhibit "2," State Land Use District Boundary Amendment Map 416; and

WHEREAS, the Council's Housing and Land Use Committee recommended passage on first reading of a State Land Use District Boundary Amendment bill for the Property in accordance with Section 19.68.040, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this Unilateral Agreement in accordance with Section 19.68.040, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

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

2. Binding until Maui County written release. That until written release by the County of Maui, (a) the Property, and all its parts, are held subject to this Declaration's covenants, conditions, and restrictions, which are effective as to and run with the Property, 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 to the Property by the Declarant, the County of Maui, or any successor or assign; (b) the acquisition of any right, title, or interest in or with respect to the Property by any person or entity constitutes acceptance of all of the covenants, conditions, and restrictions of this Declaration by the person or entity; and (c) upon any transfer of any right, title, or interest in or with respect to the Property, the transferee assumes, is bound by, and is obligated to observe and perform all of the covenants, conditions, and restrictions of this Declaration;

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

4. Christopher Robert Hayes and Candice Cay Hayes, together as husband and wife, as Declarant. That the term "Declarant" and any pronoun in reference to it, wherever used in this Declaration, means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and includes any corporation or any other entity, and means and includes Christopher Robert Hayes and Candice Cay Hayes, together as husband and wife, as Declarant and the Declarant's successors and assigns;

5. Effective as of date State Land Use District Boundary Amendment ordinance approved. That this Declaration is fully effective on the effective date of the State Land Use District Boundary Amendment ordinance approving the establishment of a State Land Use reclassification from the Agricultural District to the Urban District for the Property;

6. Develop consistent with State Land Use District Boundary Amendment conditions. That the Declarant agrees to develop the Property in conformance with the conditions stated in Exhibit "3" and in the State Land Use District Boundary Amendment ordinance;

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

8. Conditions enforceable by County of Maui. AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County of Maui, the conditions imposed in this Declaration run with the land identified in this Declaration and bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Property. The Declarant further understands and agrees that the County of Maui has the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, with the understanding the Declarant or its successors and assigns may at any time file a petition with the County Department of Planning for the removal of the conditions and termination of this Unilateral Agreement, which will be processed in the same manner as petitions for State Land Use District Boundary amendments.

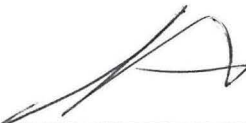
This Declaration may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, constitute one and the same Declaration.

Any persons signing this Unilateral Agreement represent that they are duly authorized and have legal capacity to execute and deliver this Unilateral Agreement. Each party represents to the other that the execution and delivery of this Unilateral Agreement and the performance of the party's obligations have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on the party and enforceable in accordance with its terms.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year indicated on the following notary public certification pages.

DECLARANT:

By: 

Christopher Robert Hayes

By: 

Candice Cay Hayes

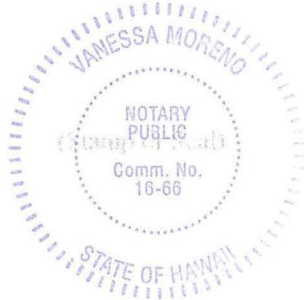
Approved as to Form and Legality:


By: 


Michael J. Hopper
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 29 day of October, 2024, before me personally appeared Christopher Robert Hayes and Candice Cay Hayes, personally known to me, or proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument, and acknowledged that such person executed the same as the person's free act and deed.



Signature: 
Name: Vanessa Moreno
Notary Public, State of Hawaii
My commission expires: February 28, 2028

Document Date: 10/23/2024 No. of Pages: 8
Notary Name: Vanessa Moreno Second Circuit
Document Description: Unilateral agreement
and Declaration of conditions for
State Land Use District Boundam Amendment
 10/29/2024
Notary Signature Date
My commission expires: February 28, 2028

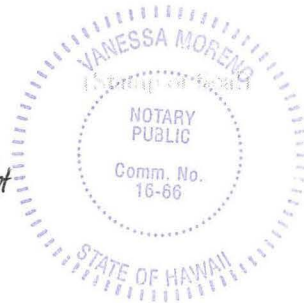


EXHIBIT "1"

LAND DESCRIPTION

WAIAKOA MAKAI HOMESTEADS SUBDIVISION, LOT 10 (PORTION)

For Zoning Change purposes affecting a portion of Lot 10 of the Waiakoa Makai Homesteads Subdivision, Tax Map Key: (2) 3-9-001:034.

All of that certain parcel of land (being a portion of Land Patent Grant 11,400 to Ernest Kia Naeole) situated at Waiakoa, Kula, Maui, Hawaii, being Lot 10 of "Waiakoa Makai Homesteads", and described as:

Beginning at the Southwest corner of this land, being also the Southeast Corner of Lot 9, the coordinates referred to Reference Point "KALAEPOHAKU" on the boundary of Pulehunui and Waiakoa being 3,154.90 feet south and 4,012.70 feet East, and said "KALAEPOHAKU" is 17,875.50 feet North and 25,734.00 feet West of Government Survey Triangulation Station "PUU O KALI" as shown on Government Survey Registered Map 2416, and running by azimuths measured clockwise from True South thence:

1. 176° 45' 1,241.50 feet along Lot 9; thence,
2. 263° 17' 47.00 feet along Ohukai Street; thence,
3. 277° 14' 483.71 feet along same; thence,
4. 356° 45' 1186.45 feet along portion of Lot 10 of the Waiakoa Makai Homesteads Subdivision, Tax Map Key: (2) 3-9-001:034; thence,
5. 90° 03' 523.42 feet along the easterly boundary of Lot 1-A-1 of the Kihei Commercial Subdivision, Tax Map Key: (2) 3-9-045:022 to the point of beginning, containing an area of 14.626 Acres, more or less.

This description was prepared by me or under my direct supervision.



Leslie K.T. Lau
Registered Professional Land Surveyor
State of Hawaii Certificate No. LS12978
Expiration Date: 30 April 2024
ACTION SURVEY, LLC



Exhibit “3”

As used in these conditions, “petition area” means the 14.626-acre portion of tax map key (2) 3-9-001:034.

1. There shall be a prohibition on any action that would interfere with or restrain farming operations adjacent to the petition area 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. 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.

ORDINANCE NO. _____

BILL NO. 30, CD1 (2024)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM COUNTY RURAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KĪHEI, MAUI, HAWAI‘I, PORTION OF TAX MAP KEY (2) 3-9-001:034

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

SECTION 1. Under Chapters 19.24 and 19.510, Maui County Code, a Change in Zoning from County Rural District to M-1 Light Industrial District (Conditional Zoning) is granted for real property situated in Kīhei, Maui, Hawai‘i, comprising 14.626 acres, identified for real property tax purposes as a portion of tax map key (2) 3-9-001:034, and more particularly described in and attached as Exhibit “A,” and in Land Zoning Map L-5126, attached as Exhibit “B” (“Project Area”).

SECTION 2. Under Section 19.510.050, Maui County Code, the Conditional Zoning granted by this Ordinance is subject to the conditions established in the attached Exhibit “C,” and the Unilateral Agreement and Declaration for Conditional Zoning, attached as Exhibit “D.”

SECTION 3. This Ordinance takes effect on approval.

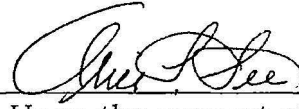
APPROVED AS TO FORM AND LEGALITY:

/s/ Michael J. Hopper

Department of the Corporation Counsel
County of Maui

hlu:misc:027acizbill02:jgk

INTRODUCED BY:

A handwritten signature in cursive script, appearing to read "Greg K. Lee". The signature is written in black ink and is positioned above a horizontal line.

Upon the request of the Mayor.

EXHIBIT "A"

LAND DESCRIPTION

WAIAKOA MAKAI HOMESTEADS SUBDIVISION, LOT 10 (PORTION)

For Zoning Change purposes affecting a portion of Lot 10 of the Waiakoa Makai Homesteads Subdivision, Tax Map Key: (2) 3-9-001:034.

All of that certain parcel of land (being a portion of Land Patent Grant 11,400 to Ernest Kia Naeole) situated at Waiakoa, Kula, Maui, Hawaii, being Lot 10 of "Waiakoa Makai Homesteads", and described as:

Beginning at the Southwest corner of this land, being also the Southeast Corner of Lot 9, the coordinates referred to Reference Point "KALAEPOHAKU" on the boundary of Pulehunui and Waiakoa being 3,154.90 feet south and 4,012.70 feet East, and said "KALAEPOHAKU" is 17,875.50 feet North and 25,734.00 feet West of Government Survey Triangulation Station "PUU O KALI" as shown on Government Survey Registered Map 2416, and running by azimuths measured clockwise from True South thence:

1. 176° 45' 1,241.50 feet along Lot 9; thence,
2. 263° 17' 47.00 feet along Ohukai Street; thence,
3. 277° 14' 483.71 feet along same; thence,
4. 356° 45' 1186.45 feet along portion of Lot 10 of the Waiakoa Makai Homesteads Subdivision, Tax Map Key: (2) 3-9-001:034; thence,
5. 90° 03' 523.42 feet along the easterly boundary of Lot 1-A-1 of the Kihei Commercial Subdivision, Tax Map Key: (2) 3-9-045:022 to the point of beginning, containing an area of 14.626 Acres, more or less.

This description was prepared by me or under my direct supervision.



Leslie K.T. Lau
Registered Professional Land Surveyor
State of Hawaii Certificate No. LS12978
Expiration Date: 30 April 2024
ACTION SURVEY, LLC

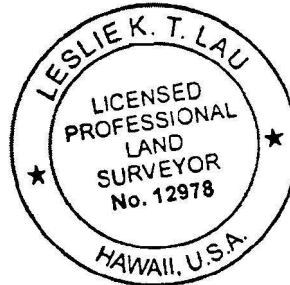


Exhibit "B"

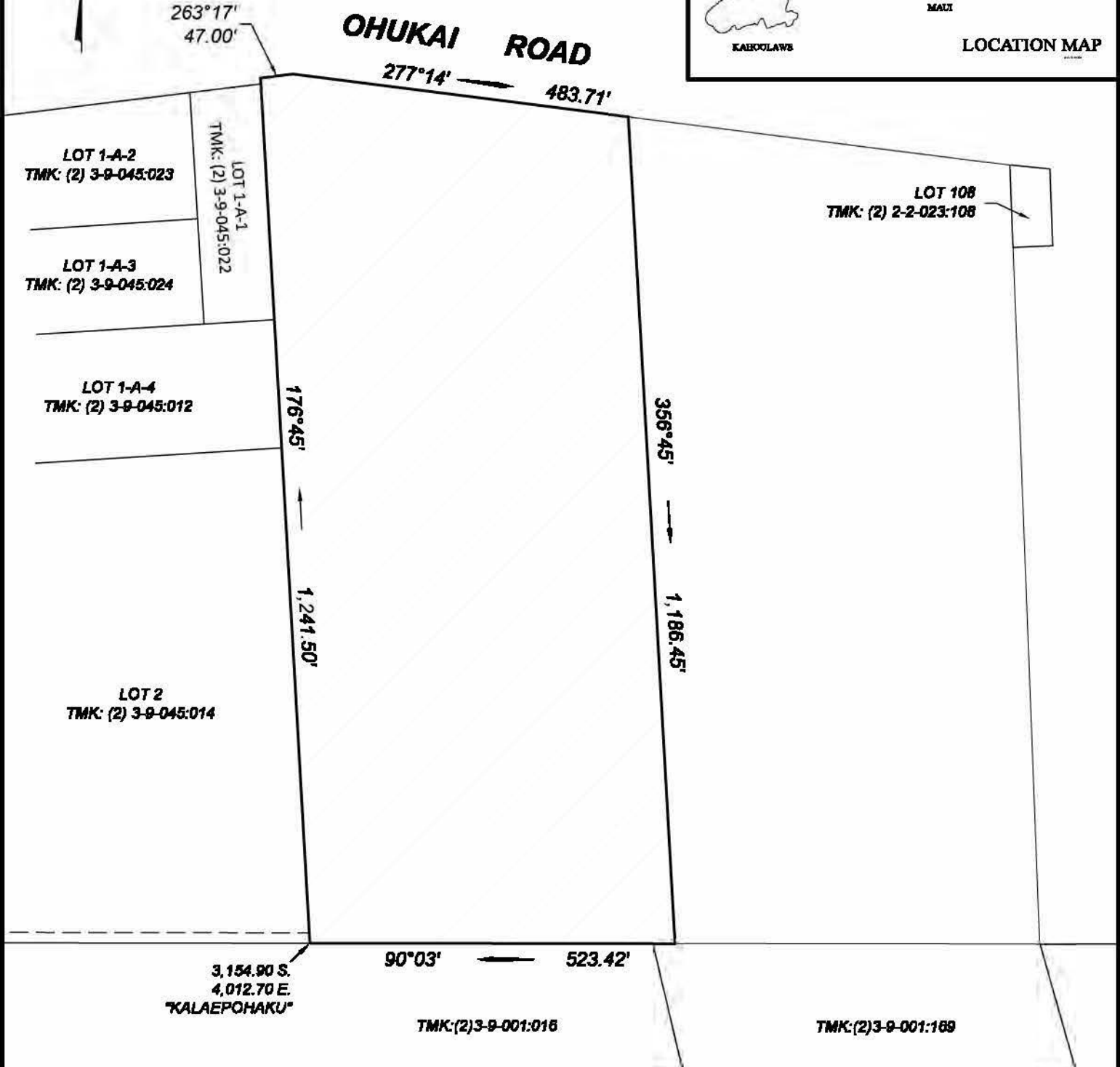
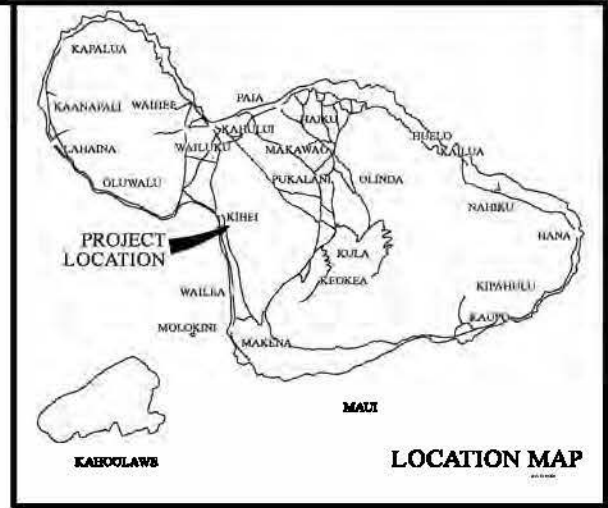
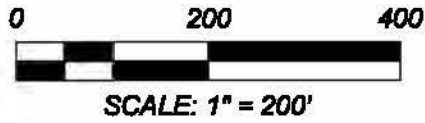


EXHIBIT "C"
CONDITIONS

1. The Applicant must construct a left-turn lane and median refuge lane at Ohukai Road and Huku Li'i Place, as approved by the Department of Public Works.
2. The Applicant must post signs in the Project Area requesting no engine brake use on Ohukai Road.
3. The project engineer and the Applicant must develop Best Management Practices and incorporate them into the lease documents, requiring tenants to use filter fabric when washing and maintaining boats and vehicles to capture hazardous material and prevent toxic waste from entering the soil.
4. The Applicant must install a 20-foot-wide area along Ohukai Road fronting the Project Area, consisting of:
 - a. A sidewalk consistent with other commercial properties in the area; and
 - b. A landscaping buffer maintained by the property owner to provide a visual screen and to minimize dirt and noise. The buffer must incorporate native trees to the extent possible, including 'Ilima.
5. The Applicant must install a solid 4-foot wall adjacent to and behind the landscaping buffer fronting Ohukai Road for noise mitigation.
6. The Applicant must work with the Department of Public Works to determine whether the proposed use and types of vehicles that travel in and out of the Project Area trigger the need for additional traffic improvements along Ohukai Road for pedestrian and bicyclist safety.
7. Any use permitted in the M-1 Light Industrial District solely because it is a permitted use in a B-1, B-2, or B-3 business district is prohibited. All other permitted uses in the M-1 Light Industrial District are allowed. Where overlap between the permitted uses in one of the business districts and the other M-1 Light Industrial District uses occurs, the use is allowed.

EXHIBIT "D"

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: 8

(Including exhibits, notary certification pages, and all other components)

Affects Tax Map Key (2) 3-9-001:034 (portion)

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, referred to as "***Declaration***" or "***Unilateral Agreement***," is made this 23rd day of October, 2024, by the following "Declarant," who is the owner of that certain 14.626-acre portion of real property located at 454 Ohukai Road, Kihei, Hawai'i, 96753, identified for real property tax purposes as Tax Map Key: (2) 3-9-001:034 ("Property").

The Declarant is Christopher Robert Hayes and Candice Cay Hayes, together as husband and wife, whose principal address is at 454 Ohukai Road, Kihei, Hawai'i 96753, and any of their successors.

WITNESSETH:

WHEREAS, the Council is considering the establishment of zoning for the Property, described in Exhibit "1" and more particularly identified in Exhibit "2," Land Zoning Map L-5126; and

WHEREAS, the Council's Housing and Land Use Committee recommended passage

on first reading of a Conditional Zoning bill in accordance with Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this Unilateral Agreement in accordance with Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. In accordance with Maui County Code. That this Declaration is made in accordance with the provisions of Section 19.510.050, Maui County Code, relating to Conditional Zoning;

2. Binding until Maui County written release. That until written release by the County of Maui, (a) the Property, and all its parts, are held subject to this Declaration's covenants, conditions, and restrictions, which are effective as to and run with the Property, 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 to the Property by the Declarant, the County of Maui, or any successor or assign; (b) the acquisition of any right, title, or interest in or with respect to the Property by any person or entity constitutes acceptance of all of the covenants, conditions, and restrictions of this Declaration by the person or entity; and (c) upon any transfer of any right, title, or interest in or with respect to the Property, the transferee assumes, is bound by, and is obligated to observe and perform all of the covenants, conditions, and restrictions of this Declaration;

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

4. Christopher Robert Hayes and Candice Cay Hayes, together as husband and wife as Declarant. That the term "Declarant" and any pronoun in reference to it, wherever used in this Declaration, means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and includes any corporation or any other entity, and means and includes Christopher Robert Hayes and Candice Cay Hayes, together as husband and wife, as Declarant and the Declarant's successors and assigns;

5. Effective as of date Conditional Zoning ordinance approved. That this Declaration is fully effective on the effective date of the Conditional Zoning ordinance approving the establishment of a Change in Zoning from the County Rural District to the M-1 Light Industrial District for the Property;

6. Develop consistent with Conditional Zoning conditions. That the Declarant agrees to develop the Property in conformance with the conditions stated in Exhibit "3" and in the Conditional Zoning ordinance;

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

8. Conditions enforceable by County of Maui. AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County of Maui, the conditions imposed in this Declaration run with the land identified in this Declaration and bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Property. The Declarant further understands and agrees that the County of Maui has the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, with the understanding the Declarant or its successors and assigns may at any time file a petition with the County Department of Planning for the removal of the conditions and termination of this Unilateral Agreement, which will be processed in the same manner as petitions for Change in Zoning.


This Declaration may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, constitute one and the same Declaration.

Any persons signing this Unilateral Agreement represent that they are duly authorized and have legal capacity to execute and deliver this Unilateral Agreement. Each party represents to the other that the execution and delivery of this Unilateral Agreement and the performance of the party's obligations have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on the party and enforceable in accordance with its terms.

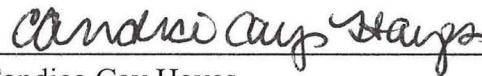
[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and year indicated on the following notary public certification pages.

DECLARANT:


By: 

Christopher Robert Hayes

By: 

Candice Cay Hayes

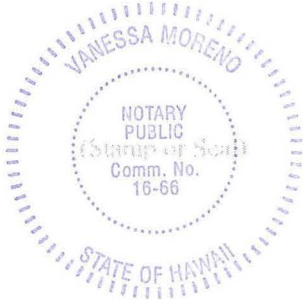
Approved as to Form and Legality:


By: 

Michael J. Hopper
Deputy Corporation Counsel
County of Maui


STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 29 day of October, 2024, before me personally appeared Christopher Robert Hayes and Candice Cay Hayes, personally known to me, or proved to me on the basis of satisfactory evidence, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument, and acknowledged that such person executed the same as the person's free act and deed.



Signature: 
Name: Vanessa Moreno
Notary Public, State of Hawaii
My commission expires: February 28, 2028

Document Date: 10/23/2024 No. of Pages: 8
Notary Name: Vanessa Moreno Second Circuit
Document Description: Unilateral agreement and declaration for conditional zoning.


Notary Signature
My commission expires: February 28, 2028
10/29/2024
Date

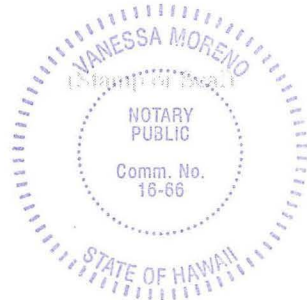


EXHIBIT "1"

LAND DESCRIPTION

WAIAKOA MAKAI HOMESTEADS SUBDIVISION, LOT 10 (PORTION)

For Zoning Change purposes affecting a portion of Lot 10 of the Waiakoa Makai Homesteads Subdivision, Tax Map Key: (2) 3-9-001:034.

All of that certain parcel of land (being a portion of Land Patent Grant 11,400 to Ernest Kia Naeole) situated at Waiakoa, Kula, Maui, Hawaii, being Lot 10 of "Waiakoa Makai Homesteads", and described as:

Beginning at the Southwest corner of this land, being also the Southeast Corner of Lot 9, the coordinates referred to Reference Point "KALAEPOHAKU" on the boundary of Pulehunui and Waiakoa being 3,154.90 feet south and 4,012.70 feet East, and said "KALAEPOHAKU" is 17,875.50 feet North and 25,734.00 feet West of Government Survey Triangulation Station "PUU O KALI" as shown on Government Survey Registered Map 2416, and running by azimuths measured clockwise from True South thence:

1. 176° 45' 1,241.50 feet along Lot 9; thence,
2. 263° 17' 47.00 feet along Ohukai Street; thence,
3. 277° 14' 483.71 feet along same; thence,
4. 356° 45' 1186.45 feet along portion of Lot 10 of the Waiakoa Makai Homesteads Subdivision, Tax Map Key: (2) 3-9-001:034; thence,
5. 90° 03' 523.42 feet along the easterly boundary of Lot 1-A-1 of the Kihei Commercial Subdivision, Tax Map Key: (2) 3-9-045:022 to the point of beginning, containing an area of 14.626 Acres, more or less.

This description was prepared by me or under my direct supervision.



Leslie K.T. Lau
Registered Professional Land Surveyor
State of Hawaii Certificate No. LS12978
Expiration Date: 30 April 2024
ACTION SURVEY, LLC



EXHIBIT “3”

CONDITIONS

1. The Applicant must construct a left-turn lane and median refuge lane at Ohukai Road and Huku Li'i Place, as approved by the Department of Public Works.
2. The Applicant must post signs in the Project Area requesting no engine brake use on Ohukai Road.
3. The project engineer and the Applicant must develop Best Management Practices and incorporate them into the lease documents, requiring tenants to use filter fabric when washing and maintaining boats and vehicles to capture hazardous material and prevent toxic waste from entering the soil.
4. The Applicant must install a 20-foot-wide area along Ohukai Road fronting the Project Area, consisting of:
 - a. A sidewalk consistent with other commercial properties in the area; and
 - b. A landscaping buffer maintained by the property owner to provide a visual screen and to minimize dirt and noise. The buffer must incorporate native trees to the extent possible, including 'Ilima.
5. The Applicant must install a solid 4-foot wall adjacent to and behind the landscaping buffer fronting Ohukai Road for noise mitigation.
6. The Applicant must work with the Department of Public Works to determine whether the proposed use and types of vehicles that travel in and out of the Project Area trigger the need for additional traffic improvements along Ohukai Road for pedestrian and bicyclist safety.
7. Any use permitted in the M-1 Light Industrial District solely because it is a permitted use in a B-1, B-2, or B-3 business district is prohibited. All other permitted uses in the M-1 Light Industrial District are allowed. Where overlap between the permitted uses in one of the business districts and the other M-1 Light Industrial District uses occurs, the use is allowed.