

REQUEST FOR LEGAL SERVICES

D a t e: October 1, 2025

F r o m: Tamara Paltin, Chair

Disaster Recovery, International Affairs, and Planning Committee

TRANSMITTAL

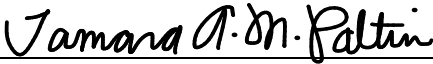
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael J. Hopper, Esq.

Subject: BILL 132 (2025), AMENDING ORDINANCE 3889 (2011), RELATING TO CHANGE IN ZONING (CONDITIONAL ZONING) FOR WEST MAUI PROJECT DISTRICT 5 (PULELEHUA) FOR PROPERTY SITUATED AT LAHAINA, HAWAI'I (DRIP-17)

Background Data: Please review and, if appropriate, approve the bill as to form and legality. Please also identify the appropriate signatories for Maui Oceanview LP and revise the unilateral agreement as appropriate. Please submit your response to drip.committee@mauicounty.us with a reference to DRIP-17.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☒ OTHER: See above.

Requestor's signature  Tamara Paltin, Chair	Contact Person <u>Jarret Pascual or Carla Nakata</u> (Telephone Extension: <u>7141 or 5519, respectively</u>)
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☐ ROUTINE (WITHIN 15 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS)

☐ RUSH (WITHIN 5 WORKING DAYS)
☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): October 28, 2025

REASON: For consideration at the November 5, 2025, DRIP Committee meeting.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)

☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

ORDINANCE NO. _____

BILL NO. 132, CD1 (2025)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE 3889 (2011), RELATING TO THE CHANGE IN ZONING (CONDITIONAL ZONING) FOR WEST MAUI PROJECT DISTRICT 5 (PULELEHUA) FOR PROPERTY SITUATED AT LAHAINA, HAWAI‘I

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

SECTION 1. By Resolution 24-174, FD1, adopted on October 25, 2024, the Council referred to the Maui Planning Commission a proposed bill to amend the Conditions of Zoning for West Maui Project District 5 (Pulelehua) by repealing Conditions 2 and 15.

Since Ordinance 3889 was enacted, property ownership has transferred to Maui Oceanview LP. As a function of the Ordinance’s unilateral agreement, the Conditions of Zoning run with the land and bind subsequent owners and assigns, including Maui Oceanview LP.

By correspondence dated September 9, 2025, the Planning Director transmitted the Maui Planning Commission’s recommendations on the bill to the Council. The Maui Planning Commission recommended that Condition 2 be amended, rather than repealed, and that the proposed repeal of Condition 15 be denied. This Ordinance incorporates the Maui Planning Commission’s recommendations, with technical and nonsubstantive revisions.

SECTION 2. Under Chapters 19.45 and 19.510, Maui County Code, Ordinance 3889 (2011), relating to the Change in Zoning (Conditional Zoning)

for West Maui Project District 5 (Pulelehua), for real property situated in Lahaina, Hawai'i, identified for Real Property Tax purposes as Tax Map Keys (2) 4-3-001:082 and (2) 4-3-001:083, comprising 153.207 acres and 151.048 acres, respectively, is amended as described in Section 3.

SECTION 3. Condition 2 of Exhibit "C" (Conditions of Zoning) of Ordinance 3889 (2011) is amended to read as follows:

"2. [Maui Land & Pineapple Company, Inc.] Maui Oceanview LP shall provide potable and non-potable water source, storage, and transmission improvements necessary to serve Pulelehua in accordance with the requirements of the County of Maui Department of Water Supply[.], except that this condition shall not preclude Pulelehua from availing itself of any exemption from the requirements of Chapter 14.12, Maui County Code, for which it qualifies under Code Section 14.12.030, or from receiving under the exemption, subdivision approval and civil permits for infrastructure construction."

SECTION 4. Under Section 19.510.050, Maui County Code, the zoning granted by this Ordinance is subject to:

- The Conditions of Zoning in Ordinance 3889's Exhibit "C," as amended by this Ordinance's Section 3; and
- This Ordinance's Exhibit "1," the First Amendment to Unilateral Agreement and Declaration for Conditional Zoning.

SECTION 5. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 6. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

drip:misc:017abill01:jpp

INTRODUCED BY:

Tamara A.M. Paltin
TAMARA PALTIN

EXHIBIT "1"

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:

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

Affects Tax Map Keys (Maui) (2) 4-3-001:082 and (2) 4-3-001:083

**FIRST AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION
FOR CONDITIONAL ZONING**

THIS FIRST AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING, referred to as "First Amendment," is made on _____, 2025, by Maui Oceanview LP, the "Declarant," who is the owner of parcels identified for Real Property Tax purposes as Tax Map Keys (2) 4-3-001:082 and (2) 4-3-001:083, located at Mahinahina, Kahana, Lahaina, Hawai'i, comprised of 153.207 acres and 151.048 acres, respectively, referred to collectively as "the Property."

The Declarant's principal address is 4950 Westgrove Drive, Suite 105, Dallas, Texas 75248, and the Declarant's authorized contact person is , who is currently , and any of their successors.

WITNESSETH:

WHEREAS, under the Unilateral Agreement and Declaration for Conditional Zoning dated October 12, 2011, recorded in the Bureau of Conveyances of the State of Hawai'i as Document 2011-176094, referred to as the "Declaration," Maui Land & Pineapple Company, Inc., the

Property owner, agreed to 17 zoning conditions; and

WHEREAS, the Property is currently owned by Maui Oceanview LP, which has assumed all covenants, conditions, and restrictions under the Declaration; and

WHEREAS, the Council recommends that Bill _____ (2025), proposing to amend Condition 2 of the zoning conditions, be approved under Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument under Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant now agrees to amended zoning Condition 2 to read as follows, with deleted material in brackets and new material underscored:

- “2. [Maui Land & Pineapple Company, Inc.] Maui Oceanview LP shall provide potable and non-potable water source, storage, and transmission improvements necessary to serve Pulelehua in accordance with the requirements of the County of Maui Department of Water Supply[.], except that this condition shall not preclude Pulelehua from availing itself of any exemption from the requirements of Chapter 14.12, Maui County Code, for which it qualifies under Section 14.12.030, Maui County Code, or from receiving, under the exemption, subdivision approval and civil permits for infrastructure construction.”

WHEREAS, the Declarant amends the Declaration to recognize the amended Condition 2; and

WHEREAS, the Declarant agrees that all other Conditions of Zoning established by Ordinance 3889 (2011) remain in effect;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this First Amendment is made in accordance with the provisions of Section 19.510.050, Maui County Code;
2. That the Conditions of Zoning imposed are reasonable and rationally relate to the objective of preserving the public health, safety, and general welfare, and the conditions fulfill the need for the public service demands created by the proposed use;
3. That the Declaration, as amended, and all of the covenants, conditions, and restrictions 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 the 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 to the Declarant means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, includes any corporation, and includes the Declarant, the Declarant’s heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That this First Amendment will become fully effective on the effective date of Bill _____ (2025), the zoning ordinance amending the Conditions of Zoning, and this First Amendment must be recorded in the Bureau of Conveyances or Land Court of the State of Hawai‘i, as may be appropriate;

6. That Condition 2 of the Declaration’s Exhibit “3” is amended to read:

“2. Maui Oceanview LP shall provide potable and non-potable water source, storage, and transmission improvements necessary to serve Pulelehua in accordance with the requirements of the County of Maui Department of Water Supply, except that this condition shall not preclude Pulelehua from availing itself of any exemption from the requirements of Chapter 14.12, Maui County Code, for which it qualifies under Code Section 14.12.030 or from receiving, under the exemption, subdivision approval and civil permits for infrastructure construction.”

7. That the Declarant agrees to develop the Property in conformance with the conditions in the Declaration’s Exhibit “3,” with this amended Condition 2;

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County of Maui, the conditions imposed in the Declaration, as amended, run with the land identified as the Property 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, as amended, by appropriate action at law or suit in equity against all persons, except that 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 Declaration, which will be processed in the same manner as petitions for Change in Zoning.

This First Amendment 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 First Amendment.

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

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

DECLARANT:

-

By: _____

-

-

Approved as to Form and Legality:

By: _____

Department of the Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this ____ day of _____, before me personally appeared _____, to me personally known, who being by me duly sworn, did say that he/she is the _____ of _____, and that said instrument was signed on behalf of _____, and _____, as _____, acknowledged said instrument to be the free act and deed of _____.

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

Stamp or Seal

Notary Public, State of _____

Print Name:

My Commission Expires:_____

NOTARY PUBLIC CERTIFICATION

Doc Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

Notary Signature: _____

Date: _____

DRIP Committee

From: DRIP Committee
Sent: Wednesday, October 1, 2025 3:59 PM
To: CorpCounselRFLS@co.maui.hi.us
Cc: DRIP Committee
Subject: (OCS) (DRIP-17); reply by 10/28/25
Attachments: 017acc01 signed.pdf

Thank you,
DRIP Committee