

ORDINANCE NO. _____

BILL NO. 118 (2016)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM
AGRICULTURAL DISTRICT TO WAIALE PROJECT DISTRICT SOUTH
(CONDITIONAL ZONING) FOR PROPERTY SITUATED
AT WAIKAPU, WAILUKU, MAUI, HAWAII

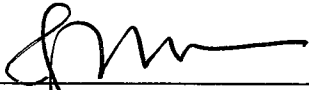
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapters 19.45 and 19.510, Maui County Code, a change in zoning from Agricultural District to Waiale Project District South (Conditional Zoning) is hereby granted for those certain parcels of land situated at Waikapu, Wailuku, Maui, Hawaii, and identified for real property tax purposes as tax map key (2) 3-8-005:037 and (2) 3-8-005:040 (por.), consisting of 122.6 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and as shown in Land Zoning Map No. L-2704, which is on file at 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:



JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui

2016-0253/2014-3084

LU-23 2016-11-22 Ord re CIZ (FINAL after LUC)

DESCRIPTION

WAIALE PROJECT DISTRICT - SOUTH

TAX MAP KEY: (2)3-8-005:037 AND 040 (PORTION)

All of that certain parcel of land, being all of Lot 3 and a portion of Lot 4-A of the Walter K. Schenk Subdivision, being also a portion of Grant 3152 to Henry Cornwell situated at Waikapu, Waiuku, Island and County of Maui, State of Hawaii

Beginning at the northwesterly corner of this parcel of land, on the southerly side of Waiko Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 10,411.85 feet South and 136.75 feet East and running by azimuths measured clockwise from True South:

1. 276° 30' 340.00 feet along the southerly side of Waiko Road;
2. Thence along same on a curve to the right with a radius of 1,020.00 feet, the chord azimuth and distance being:
287° 15' 380.51 feet;
3. 298° 00' 498.99 feet along the southerly side of Waiko Road;
4. Thence along same on a curve to the left with a radius of 730.00 feet, the chord azimuth and distance being:
285° 45' 309.78 feet to a point of reverse curvature;
5. Thence along same on a curve to the right with a radius of 2,720.00 feet, the chord azimuth and distance being:
276° 00' 237.29 feet;
6. 278° 30' 469.65 feet along the southerly side of Waiko Road;
7. Thence along same on a curve to the right with a radius of 1,350.00 feet, the chord azimuth and distance being:
285° 07' 30" 311.50 feet;
8. 291° 45' 253.29 feet along the southerly side of Waiko Road;

- | | | | |
|-----|--|---------------|---|
| 9. | 287° 45' | 966.90 feet | along same; |
| 10. | Thence along same on a curve to the left with a radius of 950.00 feet, the chord azimuth and distance being:
287° 13' 16" 17.54 feet; | | |
| 11. | Thence along same on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:
337° 15' 01" 46.34 feet; | | |
| 12. | 27° 48' 30" | 1,355.35 feet | along the westerly side of
Kuihelani Highway [F.A.S.P. No.
S-0380(4)]; |
| 13. | 117° 48' 30" | 5.00 feet | along same; |
| 14. | 27° 48' 30" | 200.00 feet | along same; |
| 15. | 297° 48' 30" | 5.00 feet | along same; |
| 16. | 27° 48' 30" | 1,100.00 feet | along same; |
| 17. | 117° 48' 30" | 10.00 feet | along same; |
| 18. | 27° 48' 30" | 300.00 feet | along same; |
| 19. | 297° 48' 30" | 5.00 feet | along same; |
| 20. | 27° 48' 30" | 412.45 feet | along same; |
| 21. | 107° 07' | 77.52 feet | along the remainder of Lot 4-A of
the Walter K. Schenk
Subdivision (being the remainder
of Grant 3152 to Henry
Cornwell); |
| 22. | 118° 45' | 55.17 feet | along same; |
| 23. | 142° 21' | 42.56 feet | along same; |
| 24. | 185° 32' | 67.95 feet | along same; |
| 25. | 189° 02' | 200.44 feet | along same; |
| 26. | 163° 25' | 89.55 feet | along same; |
| 27. | 190° 55' | 148.50 feet | along same; |
| 28. | 173° 16' | 183.73 feet | along same; |
| 29. | 179° 36' | 223.95 feet | along same; |

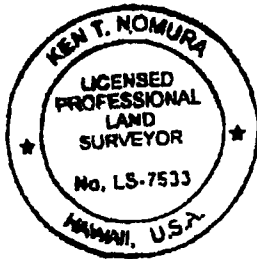
30.	167° 13'	199.83 feet	along same;
31.	157° 11'	146.91 feet	along same;
32.	124° 26'	112.05 feet	along same;
33.	154° 10'	85.83 feet	along same;
34.	173° 20'	197.01 feet	along same;
35.	142° 44'	23.99 feet	along same;
36.	113° 52'	71.52 feet	along same;
37.	116° 58'	112.02 feet	along same;
38.	174° 38'	198.93 feet	along same;
39.	163° 17'	251.92 feet	along same;
40.	148° 50'	185.28 feet	along same;
41.	153° 15'	119.97 feet	along same;
42.	141° 10'	140.68 feet	along same;
43.	129° 37'	127.19 feet	along same;
44.	150° 48'	144.58 feet	along same;
45.	140° 37'	141.05 feet	along same;
46.	152° 01'	63.16 feet	along same;
47.	162° 10'	138.88 feet	along same;
48.	149° 24'	78.67 feet	along same;
49.	137° 48'	52.02 feet	along same;
50.	125° 46'	119.73 feet	along same;
51.	133° 58'	105.22 feet	along same;
52.	163° 28'	108.03 feet	along same;
53.	133° 29'	114.74 feet	along same;
54.	104° 06'	83.47 feet	along same;

55.	102° 35'	145.60 feet	along same;
56.	122° 54'	88.55 feet	along same;
57.	128° 25'	50.07 feet	along same;
58.	145° 08'	50.48 feet	along same;
59.	155° 18'	38.31 feet	along same;
60.	171° 30'	32.31 feet	along same;
61.	175° 51'	235.74 feet	along same;
62.	140° 17'	105.18 feet	along same to the point of beginning and containing an Area of 122.635 Acres.

Prepared by: A&B Properties, Inc.
Kahului, Maui, Hawaii

August 4, 2014

This work was prepared by me or under my supervision.



Kent T. Nomura 4/30/2016
 Ken T. Nomura
 Licensed Professional Land Surveyor
 Certificate No. LS-7533
 Expiration Date: 4/30/2016

ME
32/37-k

EXHIBIT "B"

CONDITIONS OF ZONING

1. That an archaeological monitoring plan for the Waiale South project area shall be submitted to the State Historic Preservation Division for review and approval prior to commencement of any construction work within the project area.
2. That Alexander & Baldwin, LLC shall provide annual compliance reports to the Department of Planning and the Maui County Council. The reports shall include the status of the project and Alexander & Baldwin, LLC's progress in complying with the conditions of zoning, commencing within one year of the effective date of the ordinance and continuing until such time as the conditions have been fully satisfied, as determined by the Department of Planning and the Department of Public Works. Alexander & Baldwin, LLC shall also provide to the Department of Planning and the Maui County Council a copy of its annual compliance report to the State Land Use Commission, relating to the conditions set forth in the Decision and Order for the development.

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DOCUMENT NO Doc A - 61840566

DATE - TIME December 06, 2016 8:02 AM

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: 11

Affects Tax Map Keys (Maui) (2)3-8-005:037 and (2)3-8-005:040 (portion),
Waikapu, Wailuku, Maui, Hawai'i

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 21st day of November, 2016, hereinafter referred to as "DECLARATION" or "UNILATERAL AGREEMENT", by Alexander & Baldwin, LLC, a Hawai'i limited liability company, whose principal place of business is located in Honolulu, Oahu, Hawai'i, and whose mailing address is P.O. Box 3440, Honolulu, Hawai'i 96801-3440, hereinafter referred to as "DECLARANT", and who is the owner of those certain parcels located at Waikapu, Wailuku, Maui, Hawai'i, comprised of approximately 122.6 acres, and identified for real property tax purposes by Tax Map Key Nos. (2)3-8-005:037 and (2)3-8-005:040 (portion), hereinafter referred to as "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 Property, comprised of approximately 122.6 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-2704, 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. 16-188, 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 Property, 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 Property, 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 Property 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 Property 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 Waiale Project District South 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 Property 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 owners, 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.

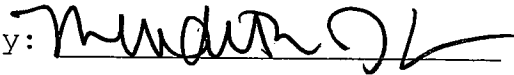
This Declaration may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Declaration.

Each person signing this Unilateral Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Unilateral Agreement. Each party represents and warrants to the other that the execution and delivery of this Unilateral Agreement and the performance of such party's obligations hereunder have been duly authorized and that this Unilateral Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

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

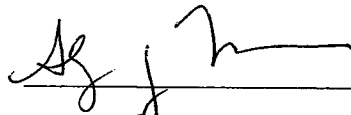
DECLARANT:

ALEXANDER & BALDWIN, LLC

By: 

Name: MEREDITH J. CHING

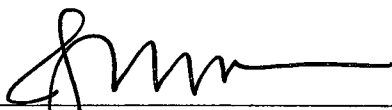
Title: SENIOR VICE PRESIDENT

By: 

Name: ALYSON J. NAKAMURA

Title: SECRETARY

APPROVED AS TO FORM AND LEGALITY:

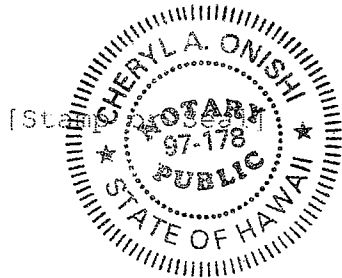


JENNIFER M.P.E. OANA
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 21st day of November, 2016, before me personally appeared MEREDITH J. CHING, 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.



Cheryl A. Onishi
Notary Public, State of Hawaii

Print Name: CHERYL A. ONISHI

My Commission Expires: APR 17 2017

NOTARY PUBLIC CERTIFICATION

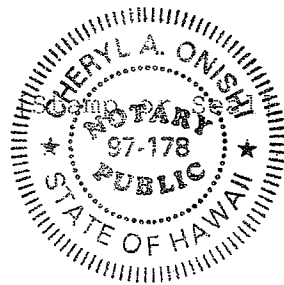
Doc. Date: Undated # Pages: 6

Notary Name: CHERYL A. ONISHI Judicial Circuit: First

Document Description: Unilateral Agreement
And Declaration For Conditional Zoning

Notary Signature: Cheryl A. Onishi

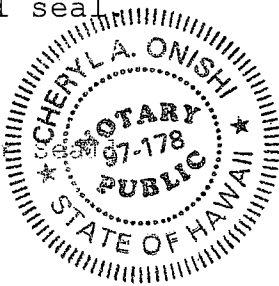
Date: 11/21/16



STATE OF HAWAII)
) SS.
CITY AND COUNTY OF HONOLULU)

On this 21st day of November, 2016, before me personally appeared ALYSON J. NAKAMURA, 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



Cheryl A. Onishi
Notary Public, State of Hawaii

Print Name: CHERYL A. ONISHI

My Commission Expires: APR 17 2017

copy

NOTARY PUBLIC CERTIFICATION

Doc. Date: Undated # Pages: 6

Notary Name: CHERYL A. ONISHI Judicial Circuit: First

Document Description: Unilateral Agreement
And Declaration For Conditional Zoning

Notary Signature: Cheryl A. Onishi

Date: 11/21/16



EXHIBIT "1"
DESCRIPTION

WAIALE PROJECT DISTRICT - SOUTH

TAX MAP KEY: (2)3-8-005:037 AND 040 (PORTION)

All of that certain parcel of land, being all of Lot 3 and a portion of Lot 4-A of the Walter K. Schenk Subdivision, being also a portion of Grant 3152 to Henry Cornwell situated at Waikapu, Wailuku, Island and County of Maui, State of Hawaii

Beginning at the northwesterly corner of this parcel of land, on the southerly side of Waiko Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 10,411.85 feet South and 136.75 feet East and running by azimuths measured clockwise from True South:

1. 276° 30' 340.00 feet along the southerly side of Waiko Road;
2. Thence along same on a curve to the right with a radius of 1,020.00 feet, the chord azimuth and distance being:
287° 15' 380.51 feet;
3. 298° 00' 498.99 feet along the southerly side of Waiko Road;
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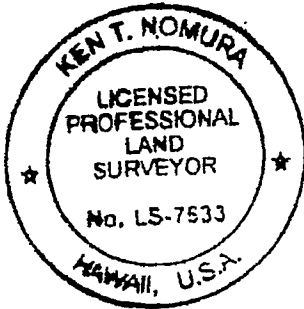
9. 287° 45' 966.90 feet along same;
10. Thence along same on a curve to the left with a radius of 950.00 feet, the chord azimuth and distance being:
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11. Thence along same on a curve to the right with a radius of 30.00 feet, the chord azimuth and distance being:
337° 15' 01" 46.34 feet;
12. 27° 48' 30" 1,355.35 feet along the westerly side of
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S-0380(4)];
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21. 107° 07' 77.52 feet along the remainder of Lot 4-A of
the Walter K. Schenk
Subdivision (being the remainder
of Grant 3152 to Henry
Cornwell);
22. 118° 45' 55.17 feet along same;
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61.	175° 51'	235.74 feet	along same;
62.	140° 17'	105.18 feet	along same to the point of beginning and containing an Area of 122.635 Acres.

Prepared by: A&B Properties, Inc.
Kahului, Maui, Hawaii

August 4, 2014



This work was prepared by me or under my supervision.

Ken T. Nomura 4/20/2014
 Ken T. Nomura
 Licensed Professional Land Surveyor
 Certificate No. LS-7633
 Expiration Date: 4/30/2016

ME
32/37-k

EXHIBIT "2"

CONDITIONS OF ZONING

1. That an archaeological monitoring plan for the Waiale South project area shall be submitted to the State Historic Preservation Division for review and approval prior to commencement of any construction work within the project area.
2. That Alexander & Baldwin, LLC shall provide annual compliance reports to the Department of Planning and the Maui County Council. The reports shall include the status of the project and Alexander & Baldwin, LLC's progress in complying with the conditions of zoning, commencing within one year of the effective date of the ordinance and continuing until such time as the conditions have been fully satisfied, as determined by the Department of Planning and the Department of Public Works. Alexander & Baldwin, LLC shall also provide to the Department of Planning and the Maui County Council a copy of its annual compliance report to the State Land Use Commission, relating to the conditions set forth in the Decision and Order for the development.

DIGEST

ORDINANCE NO. _____
BILL NO. 118 (2016)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM
AGRICULTURAL DISTRICT TO WAIALE PROJECT DISTRICT SOUTH
(CONDITIONAL ZONING) FOR PROPERTY SITUATED
AT WAIKAPU, WAILUKU, MAUI, HAWAII

This bill proposes to change zoning from Agricultural District to Waiale Project District South (Conditional Zoning) for 122.6 acres situated at the corner of Kuihelani Highway and East Waiko Road, Waikapu, Maui, Hawaii, and identified for real property tax purposes as TMK: (2) 3-8-005:037 and (2) 3-8-005:040 (por.).

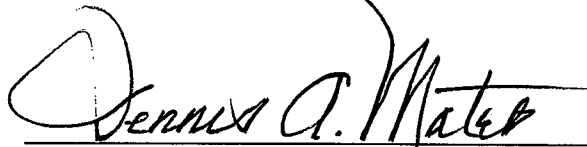
I, DENNIS A. MATEO, County Clerk of the County of Maui, State of Hawaii, DO HEREBY CERTIFY that the foregoing BILL NO. 118 (2016) was passed on First Reading by the Council of the County of Maui, State of Hawaii, on the 2nd day of December, 2016, by the following vote:

AYES: Councilmembers Robert Carroll, Eleanora Cochran, Donald G. Couch Jr., S. Stacy Crivello, G. Riki Hokama, Vice-Chair Donald S. Guzman, and Chair Michael B. White.

NOES: None.

EXCUSED: Councilmembers Gladys C. Baisa and Michael P. Victorino.

DATED at Wailuku, Maui, Hawaii, this 5th of December, 2016.



DENNIS A. MATEO, COUNTY CLERK
COUNTY OF MAUI, STATE OF HAWAII

Copies of the foregoing Bill, in full, are on file in the Office of the County Clerk, County of Maui, for use and examination by the public.