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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

August 1, 2019

Director of Council Services
Traci N. T. Fujita, Esq.

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OFFICE OF THE
COUNTY CLERK

The Honorable Kelly T. King
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair King:

**SUBJECT: AMENDMENT TO PROPOSED BILL RELATING TO A
CHANGE IN ZONING TO WAIKAPU COUNTRY TOWN
(WCT) DISTRICT (CONDITIONAL ZONING) FOR
PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII**

May I request the attached proposed amendment to the proposed bill, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM WAILUKU-KAHULUI PROJECT DISTRICT 5 (MAUI TROPICAL PLANTATION) AND AGRICULTURAL DISTRICT TO WAIKAPU COUNTRY TOWN (WCT) DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII," be placed on the next Council meeting agenda.

Sincerely,

Handwritten signature of Tamara A. M. Paltin in black ink.

TAMARA PALTIN
Councilmember

pslu:ltr:030achr01:jgk

Attachment

COUNTY COMMUNICATION NO. 19-325

MAUI COUNTY COUNCIL
Amendment Summary Form

Legislation: Change in Zoning for Waikapu Country Town project.

Proposer: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee.

Description: Amend the Conditions of Zoning by:

- 1) correcting the name of the William S. Filios Separate Property Trust dated April 3, 2000;
- 2) allowing more uses in the areas described in Conditions 16 and 25;
- 3) changing the deadline for the construction of backbone infrastructure to ten years from the first final subdivision approval;
- 4) removing Condition 26; and
- 5) specifying the requirements to implement priority projects in the Integrated Natural-Cultural Resource Preservation & Management Plan dated June 2019.

Motions: First, move to amend the defined landowners as reflected at the top of the Conditions of Zoning attached as Exhibit "C" and Exhibit "3" to Exhibit "D" of the Change in Zoning bill by correcting the name of the William S. Filios Separate Property Trust dated April 3, 2000.

Second, move to amend Condition 16 of the Conditions of Zoning, relating to the Agricultural Easement, by inserting a new third sentence to read as follows:

"The following non-commercial open land recreation uses are allowed along the fifty-foot perimeter of the preserve: hiking, equestrian activities, greenways, mountain biking, and accessory restroom facilities."

Third, move to amend Condition 22 of the Conditions of Zoning, relating to the Infrastructure Deadline, by:

- Striking the following language: “February 26, 2018, the date of the State Land Use Commission Decision and Order approving Petition A15-798,”; and
- Inserting in its place the following: “the date of the first final subdivision approval.”

Fourth, move to amend the third sentence of Condition 25 of the Conditions of Zoning, as it relates to the use of the 270-acre agricultural preserve, by:

- Striking the following language: “as follows: principal uses: no animal sales yards are allowed; accessory uses: only the following accessory uses are allowed: two farm dwellings per lot; small scale energy systems, small-scale animal-keeping; and parks for public use. There shall be no more than two farm dwellings on each lot, and there shall be no farm labor dwellings.”; and
- Inserting in its place the following: “to the permitted principal uses in the County’s Agricultural District and to only the following accessory uses: two farm dwellings per lot, one of which shall not exceed 1,000 square feet of developable area; storage, wholesale, and distribution facilities associated with agriculture in the County; processing of agricultural products; small-scale energy systems, small-scale animal-keeping; non-commercial open land recreation uses; and other uses that primarily support a permitted principal use, provided that such uses shall be approved by the appropriate planning commission as conforming to the intent of the County’s Agricultural District.”

Fifth, move to amend the Conditions of Zoning by striking Condition 26 and renumbering the subsequent conditions accordingly.

Sixth, move to amend Condition 27 (renumbered to Condition 26 if the fifth motion is successful) of the Conditions of Zoning by:

- Striking the phrase “all priority projects described” and inserting in its place the phrase “as described the following priority projects”;
- Striking the phrase ““3,” except Waikapu Stream Priority Projects #2 and #3.” and inserting in its place the language reflected on the attachment to this document, relating to priority projects for Waikapū Watershed Management, Waikapū Stream, and Land and Cultural Resources; and
- Renumbering the subsequent condition accordingly.

Effect: See attachment.

Attachment: Revised Conditions of Zoning (Exhibit “C” and Exhibit “3” to Exhibit “D” of the Change in Zoning bill).

pslu:ltr:030aasf01:jgk

EXHIBIT "C"

CONDITIONS OF ZONING

As it relates to the following conditions, "Landowners" means Waikapu Properties, LLC; MTP Land Partners, LLC; the William S. Filios Separate Property Trust dated April 3, 2000; Waiale 905 Partners, LLC; and any future owner or lessee.

1. Transportation – State Department of Transportation, Highways Division (SDOT-H).
 - a. Landowners shall mitigate all Project-generated traffic impacts as required by the SDOT-H. Landowners shall enter into an agreement regarding the scope and timing of required traffic improvements to mitigate the traffic related impacts of the project on SDOT-H facilities as generally indicated in the project's Pro Rata Share Calculations for Waikapu Country Town Project dated June 29, 2018, as approved by SDOT-H. The agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the project.
 - b. Landowners shall fully fund project intersections with Honoapiilani Highway only at the Main Street Intersection (also referred to as Study Intersection #9 in the TIAR/EIS) and at the Waiale Road Extension Intersection (also referred to as Study Intersection #13 in the TIAR/EIS.) Landowners are solely responsible for funding the Main Street and Waiale Road Extension intersection improvements.
 - c. Landowners shall conduct an analysis of the suitability of a roundabout at the required Honoapiilani Highway and Main Street Intersection. Landowners shall transmit its analysis with findings to the SDOT-H; County of Maui, Department of Planning (Department); and the County of Maui, Department of Public Works (DPW). The SDOT-H shall determine if such a roundabout or traffic signal must be funded by Landowners.
 - d. Landowners shall provide pedestrian crossings on Honoapiilani Highway at the intersections of Main Street and Waiale Road Extension, and ensure that the development layout provides pedestrian routes to these pedestrian crossings.

SDOT-H will confirm compliance with this condition.

2. Transportation – State Department of Transportation, Airports Division (SDOT-A). Landowners shall work with SDOT-A to confirm compliance with the Federal Aviation Administration or other relevant government agency's

guidelines and regulations regarding aircraft passage or airport operations at the Kahului Airport.

3. Transportation – DPW.

a. Landowners shall conduct a pro rata traffic share study for the Waiale Road Extension and transmit it to DPW for review and approval prior to the County's approval of the first subdivision application for the project. The pro rata share study shall evaluate the project's percentage of future vehicle trips on the Waiale Road Extension from Waiko Road to Honoapiilani Highway.

b. Landowners shall enter into an agreement with DPW regarding the project's pro rata share contribution to the Waiale Road Extension from Waiko Road to Honoapiilani Highway. The agreement shall determine the project's pro rata share of the total anticipated costs for design and construction of the future Waiale Road Extension and the methods and timing by which the payments or similar contributions are made. The agreement will also consider the project's actual traffic generated inasmuch as any reductions or increases in traffic than originally estimated may reduce or increase the pro rata share in the future. Further, Landowners shall deed the Waiale Road Extension right-of-way to DPW, upon demand, the value of which shall not be considered towards the pro rata share used in the agreement. The agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the project. DPW shall confirm compliance with this condition.

4. Stormwater Management and Drainage. Landowners shall maintain existing drainage patterns to the maximum extent feasible and shall implement Best Management Practices (BMPs) to: a) minimize infiltration and runoff from construction and vehicle operations, b) reduce or eliminate the potential for soil erosion and ground water pollution, and c) formulate dust control measures to be implemented during and after the construction process in accordance with Department of Health (DOH) and County of Maui guidelines, ordinances and rules. The BMPs shall include a program for the maintenance of drainage swales within the Project Area. The design of drainage improvements and maintenance approved by the DPW shall not increase runoff from the Project Area as a result of an increase in impervious surfaces. The DPW shall confirm compliance with this condition.

5. Residential Workforce Housing. Landowners shall provide residential workforce housing opportunities in accordance with the County of Maui's residential workforce housing requirements. The required number of residential workforce housing units as determined by the County of Maui shall be completed according to a timetable associated with the issuance of building permits for market-rate dwelling units as required by the Maui

County Code and as agreed to by the Department of Housing and Human Concerns. Landowners will not seek project approvals authorized by Chapter 201H, Hawaii Revised Statutes, or similar project approvals for this project.

6. **Wastewater.** Landowners shall participate in the funding and construction of adequate private or public wastewater facilities for the Project Area. The wastewater facilities shall be in accordance with the applicable standards and requirements of the DOH and the County of Maui as applicable. If Landowners' proposed wastewater facilities are to be located within the State agricultural districts, Landowners shall apply for a State Special Permit in accordance with the provisions of Chapter 205, Hawaii Revised Statutes (HRS). If Landowners desire to request an initial or interim connection to County wastewater facilities for any dwellings, an agreement must be made to the satisfaction of the Department of Environmental Management and other applicable agencies prior to the issuance of any building permit. County or private operable wastewater facilities must be available to serve any use or structure prior to the issuance of the building permit for such use or structure.
7. **Air Quality.** Landowners shall participate in an air quality monitoring program as required by the DOH.
8. **Education Contribution Agreement.** Landowners shall contribute to the development, funding, and construction of school facilities in compliance with the Educational Contribution Agreement for Waikapu Country Town, undated but executed as of January 31, 2017, entered into by Landowners and the Department of Education. Landowners shall ensure that prospective buyers, purchasers, and subsequent owner-builders of lots are given notice of the requirement to pay the Central Maui District Impact Fee in accordance with the Educational Contribution Agreement. Such notice shall be recorded and run with the land.
9. **Energy Conservation Measures.** Landowners shall implement measures to promote energy conservation, sustainable design and environmental stewardship including the use of solar water heating and photovoltaic systems for on-site infrastructure systems, residential, commercial, and civic uses. Solar water heating systems shall be required for new single-family residential construction per Section 196-6.5, Hawaii Revised Statutes. Landowners shall provide information to home purchasers regarding energy conservation measures that may be undertaken by individual homeowners in the Project Area. Verification of compliance with this condition shall be provided to the Department prior to submitting any building permit application.
10. **Water Conservation Measures.** Landowners shall implement water conservation measures and BMPs such as the use of indigenous plants and as required by the County of Maui. Verification of compliance with this

condition shall be provided to the Department prior to submitting any building permit application.

11. **Water System.** Landowners shall participate in the funding and construction of adequate private or public water source, storage, and transmission facilities to accommodate the proposed uses for each subdivision in the Project Area in accordance with the applicable standards and requirements of the DOH and the County of Maui, with plans submitted for approval by the appropriate agency. Landowners shall coordinate with the Commission on Water Resources Management regarding the overall impact of water pumpage on the Waikapu aquifer. Further, Landowners shall submit such information to the Department of Water Supply as may be requested to reflect changes in water demand forecasts and supply for the proposed uses in accordance with the County of Maui's Water Use and Development Plan. Compliance with this condition shall be confirmed by the Department of Water Supply.
12. **Street Lights.** Landowners shall use fully shielded street lights within the Project Area to avoid impacts to avifauna and other wildlife populations and to prevent light diffusion into the night sky.
13. **Sirens.** Landowners shall fund and install three (3) civil defense warning sirens as specified by and in the locations identified by the State Department of Defense according to a timetable agreed upon by the State Department of Defense.
14. **Parks.** Landowners shall comply with the park dedication requirements of the County of Maui. Landowners shall provide a park construction and phasing plan approved by the Department of Parks and Recreation, DPW, and Department of Planning, which shall be in accordance with the Maui County Code. Landowners shall develop parks and recreational areas that may be used by all ages and are not used primarily as water retention basins.
15. **Established Gathering and Access Rights Protected.** Pursuant to Article XII, Section 7 of the Hawaii State Constitution, Landowners shall preserve and protect any established gathering and access rights of Native Hawaiians who have customarily and traditionally used the Project Area to exercise subsistence, cultural, gathering, and religious practices or for access to other areas for such purpose.
16. **Agricultural Easement.** Landowners shall submit to the Department an executed copy of the conservation easement or relevant instrument for 877.50 acres of adjacent agricultural lands as represented to the State of Hawaii Land Use Commission and to the County of Maui and depicted in Exhibit "1" prior to the first final subdivision approval. No dwelling or structure shall be constructed or used for residential or dwelling purposes,

including farm dwellings, farm labor dwellings and farm worker housing, on the agricultural lands that are subject to the agricultural easement or conservation easement, and such easement shall include this restriction. On the lands that are subject to the conservation easement, there shall be no animal hospitals and animal board facilities; riding academies; open land recreation uses, except that farm tours are allowed; parks for public use; and family child care homes. The following non-commercial open land recreation uses are allowed along the fifty-foot perimeter of the preserve: hiking, equestrian activities, greenways, mountain biking, and accessory restroom facilities. Landowners shall not seek county special use permits for open land recreation activities in the area subject to the conservation easement. There shall be no commercial agricultural structures, except farmer's markets and agricultural product stands in the area subject to the conservation easement. If any development is proposed in the area subject to the conservation easement or relevant instrument, Department of Land and Natural Resources State Historic Preservation Division (DLNR-SHPD) shall first determine whether an archaeological inventory survey shall be provided by Landowners for such area. Landowners shall notify the Department of any proposed development within the conservation easement lands and any determination made by DLNR-SHPD. Landowners shall supply adequate water for agricultural use in the areas subject to the conservation easement, to the maximum extent feasible. There shall be no removal of sand classified as Qdo in the USGS Mineral Resources Spatial Data as older dune deposits (Holocene and Pleistocene), from property identified for real property tax purposes as tax map keys (2) 3-6-002:003 and (2) 3-6-002:001.

17. Notification of Agricultural Use. Landowners, and all subsequent owners, shall disclose to developers, purchasers, and lessees of the provisions of Chapter 165, Hawaii Revised Statutes, the Hawaii Right to Farm Act. The notice and disclosure shall be a part of any conveyance document such as a deed, lease, or agreement of sale. The notice and disclosure shall contain at least the following information: a) that the developers, purchasers, and lessees shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent lands in the State Land Use Agricultural District; and b) that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. For the purpose of this condition, the term "farming operations" shall have the same meaning as provided in Section 165-2, Hawaii Revised Statutes.
18. Archaeological and Historic Sites. Landowners shall provide the following prior to any ground disturbance, including the issuance of grading or grubbing permits, as agreed upon with DLNR-SHPD's acceptance of Landowners' Archaeological Inventory Survey: a) Archaeological monitoring for all ground disturbing activities pursuant to a DLNR-SHPD approved monitoring plan, which shall include data recovery of archaeological and

historic sites; b) If site 50-50-04-5197 (Waihee Ditch) is impacted by the Project, it will be further documented in consultation with DLNR-SHPD; c) If any development is proposed for the area to be dedicated to agriculture, DLNR-SHPD shall be notified and will make a determination on whether an archaeological inventory survey is to be provided by Landowners; d) Landowners shall submit a preservation plan to DLNR-SHPD for two (2) sites: the irrigation features (Site 50-50-04-7884) and the WWII bunker (Site 50-50-04-7883); and e) If there is an inadvertent discovery of single or multiple human skeletal remains, Landowners shall provide written consent to DLNR-SHPD extending for at least 30 days the statutory timeline outlined in Section 13-300-40, Hawaii Administrative Rules. The preservation plan shall be submitted to the DLNR-SHPD for review and acceptance prior to any ground disturbance in the vicinity of the two (2) sites. Landowners shall comply with all interim and permanent mitigation and preservation measures required by DLNR-SHPD. Landowners shall provide verification to the Department that DLNR-SHPD has determined that all required historic preservation measures have been implemented. Landowners shall notify DLNR-SHPD prior to the first ground disturbance activity.

19. Cultural. Landowners shall consult with those persons known as Waikapu Stream South Kuleana Lo'i Kalo Farmers and Hui o Na Wai 'Eha to minimize the impacts on their traditional customary rights and practices from any development in the Project Area. Additionally, Landowners shall grant access easements over the appropriate portions of the Project Area in favor of the owners of the Mahi-Puleloa parcels, identified as LCA 2944:3 to Ehunui (TMK: (2) 3-6-005:010) and as Grant 1513 to Ehunui (TMK: (2) 3-6-005:009) and in favor of the owners of the Kauihou parcels, identified as LCA 3340:1 (por.) to Nahau (TMK: (2) 3-6-005:067), as LCA 3103 to Kalawaia (TMK: (2) 3-6-005:014) and as LCA 3110:3.2 to Kuolaia (TMK: (2) 3-6-005:066). The easements shall be recorded and run with the land.
20. Endangered Species. Landowners shall implement the following procedures to avoid potential impacts to endangered species: a) Landowners shall not clear dense vegetation, including woody plants greater than fifteen feet (15 ft.) in height, along the periphery of the Project Area during the period from June 1 to September 15 of each year, which is the time that the Hawaiian hoary bat may be carrying young and thus could be at risk from the clearing activities; b) landowners shall consult with the United States Fish and Wildlife Service to determine measures needed with regard to the endangered Blackburn's Sphinx Moth and shall implement such measures in connection with the development of the Project Area; and c) for any nighttime work required during any construction within the Project Area and for long term features, exterior lighting shall be shielded so as to reduce the potential for interactions of or disturbance to Hawaiian Petrels and Newell's Shearwaters.
21. Development in Compliance with Maui Island Plan. Landowners shall develop the Project in substantial compliance with the Planned Growth Area

Rationale and goals, objectives, policies, and implementing actions described in the Maui Island Plan for the Project identified as “Waikapu Tropical Plantation Town.”

22. Infrastructure Deadline. Landowners shall complete construction of the backbone infrastructure, which consists of primary roadways and access points; internal roadways; on-site and off-site water, sewer, and electrical system improvements; and stormwater and drainage and other utility improvements within ten (10) years from [February 26, 2018, the date of the State Land Use Commission Decision and Order approving Petition A15-798.] the date of the first final subdivision approval.
23. Compliance with Representations to the Maui County Council. Landowners shall develop the Project Area in substantial compliance with the representations made to the Maui County Council in its approval of the subject change in zoning. Failure to develop the Project Area in accordance with such representations may result in enforcement, including reversion of the Project Area to its former zoning and community plan classifications.
24. Annual Reports. Landowners shall provide the Department an annual report on the status of the development of the Project Area and Landowners’ progress in complying with the conditions imposed herein. The first annual report shall be submitted within one (1) year of the effective date of the CIZ ordinance, and subsequent reports shall be submitted annually on or near the same date.
25. The Project Area’s Agricultural Master Plan, as set forth in Chapter III, Section 5 of the project’s Final EIS identifies an agricultural preserve that is subject to an agricultural conservation easement, and a balance of approximately 270 acres that is mauka of Honoapiilani Highway, for which the zoning remains agriculture. The approximately 270-acre area is depicted in Exhibit “2” as being a portion of Lot 6 and identified as the Mauka Agricultural Lands. The use of the 270-acre area is restricted [as follows: principal uses: no animal sales yards are allowed; accessory uses: only the following accessory uses are allowed: two farm dwellings per lot; small scale energy systems, small-scale animal-keeping; and parks for public use. There shall be no more than two farm dwellings on each lot, and there shall be no farm labor dwellings.] to the permitted principal uses in the County’s Agricultural District and to only the following accessory uses: two farm dwellings per lot, one of which shall not exceed 1,000 square feet of developable area; storage, wholesale, and distribution facilities associated with agriculture in the County; processing of agricultural products; small-scale energy systems, small-scale animal-keeping; non-commercial open land recreation uses; and other uses that primarily support a permitted principal use, provided that such uses shall be approved by the appropriate planning commission as conforming to the intent of the County’s Agricultural District. Landowners shall not seek county special use permits, conditional permits or use variances; state special permits; or approvals

under Chapter 201H, Hawaii Revised Statutes. If subdivided, the 270-acre area shall consist of no more than five lots. Landowners shall record with the bureau of conveyances, or land court, as appropriate, this condition on property identified for real property tax purposes as tax map key (2) 3-6-004:003, as pertaining to the 270-acre area and provide proof of recordation to the Maui County Council prior to the first final subdivision approval, and such condition shall run with the land and bind all future owners or lessees of the area.

[26. Landowners shall establish the Waikapū Cultural Preserve, Cultural Corridor and Riparian Buffer, as described in the Integrated Natural-Cultural Resource Preservation & Management Plan, dated June 2019, and attached as Exhibit “3,” prior to the first final subdivision approval.]

[27.] 26. Landowners shall, prior to the first final subdivision approval, implement [all priority projects described] as described the following priority projects in the Integrated Natural-Cultural Resource Preservation & Management Plan, dated June 2019, and attached as Exhibit [“3,” except Waikapu Stream Priority Projects #2 and #3.] “3”:

A. Waikapū Watershed Management

1. Priority Project #1 – prepare and initiate implementation of the 5-year Integrated Waikapū Watershed Management Plan.
2. Priority Project #2 – establish the Mauna Kahalawai Watershed Partnership Perpetual Fund when a homeowners’ association is established and generating revenue from residents and businesses within the Project Area.

B. Waikapū Stream

1. Priority Project #1 – comply with instream flow standards and State water use permits.

C. Land and Cultural Resources

1. Priority Project #1 – develop and initiate implementation of a plan to ensure access to the Waikapū Valley for Native Hawaiian traditional and customary practices and gathering while controlling access to the general public to protect natural and cultural resources.
2. Priority Project #2 – Establish access easements for the two Mahi kuleana parcels
3. Priority Project #3 – Establish the Waikapū Cultural Preserve, Cultural Corridor and Riparian Buffer and fund its management.
4. Priority Project #4 – Integrate Waikapū ethnohistorical resources throughout the Project Area.

[28.] 27. Landowners shall submit all street names in the Project Area for review and approval to the Public Works Commission. Streets in the Project Area shall be named in consideration of traditional land divisions, trade winds, and other natural and cultural factors relevant to the Project Area.