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OFFICE OF THE
COUNTY COUNCIL

MEMO TO: PSLU-54(5) File

F R O M: Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

Tamara A. M. Paltin

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENT RELATING TO
KAPALUA MAUKA** (PSLU-54(5))

The attached informational document pertains to Item PSLU-54(5) on the Committee's agenda.

pslu:ltr:054(5)afile01:ans

Attachment

ORDINANCE NO. 3358

BILL NO. 3 (2006)

DRAFT 1

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM COUNTY AGRICULTURAL DISTRICT AND INTERIM DISTRICT TO WEST MAUI PROJECT DISTRICT 2 (KAPALUA MAUKA) (CONDITIONAL ZONING), FOR PROPERTIES SITUATED ON THE SOUTHEASTERLY SIDE OF HONOAPIILANI HIGHWAY, AT HONOKAHUA, NAPILI, LAHAINA, 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 County Agricultural District and Interim District to West Maui Project District 2 (Kapalua Mauka) (conditional zoning), is hereby granted for those certain parcels of land located on the southeasterly side of Honoapiilani Highway, at Honokahua, Napili, Lahaina, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Numbers (2) 4-2-001:042, (2) 4-3-001:006 (por.), and (2) 4-3-001:008 (por.), comprising approximately 924.8 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. 989, which is on file in 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:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

S:\CLERICAL\LJN\ORD\CIZ\West Maui Project 2 Change In Zoning.wpd

**Kapalua Project District 2
Description of Perimeter Boundary**

Land situated on the southeasterly side of Honoapiilani Highway, (F.A.P. No. RF-030-1(3)), at Honokahua, Napili 2 and 3, Napili 4 and 5, Lahaina, Maui, Hawaii

Being portions of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21), Royal Patent 1663, Land Commission Award 5524, Apana 1 to L. Konia

Beginning at a point at the southwesterly corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 5,756.60 feet South and 2,710.69 feet East and running by azimuths measured clockwise from True South:

1. 220° 37' 19" 222.56 feet along the southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)) to a point;
2. 310° 37' 19" 20.00 feet along same to a point;
3. 220° 37' 19" 356.68 feet along same to a point;
4. 130° 37' 19" 20.00 feet along same to a point;
5. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 130° 37' 19", and the point of tangency azimuth from the radial point being: 134° 02' 45", having a radius of 6,850.23 feet, the chord azimuth and distance being: 222° 20' 02" 409.30 feet to a point;
6. 239° 43' 01" 114.35 feet along same to a point;

EXHIBIT A

7. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 134° 58' 15", and the point of tangency azimuth from the radial point being: 136° 15' 50", having a radius of 6,820.23 feet, the chord azimuth and distance being: 225° 37' 02.5" 153.92 feet to a point;
8. 178° 22' 04" 107.32 feet along same to a point;
9. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 136° 51' 41", and the point of tangency azimuth from the radial point being: 140° 35' 19", having a radius of 6,900.23 feet, the chord azimuth and distance being: 228° 43' 30" 448.80 feet to a point;
10. 320° 35' 19" 50.00 feet along same to a point;
11. 230° 35' 19" 630.62 feet along same to a point;
12. 213° 14' 05" 167.63 feet along same to a point;
13. 230° 35' 19" 223.80 feet along same to a point;
14. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 320° 35' 19", and the point of tangency azimuth from the radial point being: 318° 56' 28", having a radius of 2,750.09 feet, the chord azimuth and distance being: 229° 45' 53.5" 79.07 feet to a point;
15. 318° 56' 28" 20.00 feet along same to a point;

16. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 318° 56' 28", and the point of tangency azimuth from the radial point being: 317° 51' 36", having a radius of 2,770.09 feet, the chord azimuth and distance being: 228° 24' 02" 52.27 feet to a point;
17. 317° 51' 36" 30.00 feet along same to a point;
18. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 317° 51' 36", and the point of tangency azimuth from the radial point being: 312° 27' 18", having a radius of 2,800.09 feet, the chord azimuth and distance being: 225° 09' 27" 264.05 feet to a point;
19. 132° 27' 18" 30.00 feet along same to a point;
20. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 312° 27' 18", and the point of tangency azimuth from the radial point being: 309° 12' 43", having a radius of 2,770.09 feet, the chord azimuth and distance being: 220° 50' 0.5" 156.77 feet to a point;
21. 129° 12' 43" 30.00 feet along same to a point;

22. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 309° 12' 43", and the point of tangency azimuth from the radial point being: 291° 54' 57", having a radius of 2,740.09 feet, the chord azimuth and distance being: 210° 33' 50" 824.03 feet to a point;
23. 217° 43' 38" 70.35 feet along same to a point;
24. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 290° 30' 38", and the point of tangency azimuth from the radial point being: 277° 05' 19", having a radius of 2,760.09 feet, the chord azimuth and distance being: 193° 47' 58.5" 645.09 feet to a point;
25. 187° 05' 19" 1,114.20 feet along same to a point;
26. 277° 05' 19" 10.00 feet along same to a point;
27. 185° 39' 23" 400.13 feet along same to a point;
28. 175° 46' 38" 101.98 feet along same to a point;
29. 187° 05' 19" 518.19 feet along same to a point;
30. 284° 00' 307.46 feet along Lot 49 of The Plantation at Kapalua (File Plan No. 2006) to a point;
31. 328° 38' 787.92 feet along same to a point;
32. 320° 11' 342.84 feet along same to a point;
33. 299° 45' 473.25 feet along same to a point;
34. 294° 02' 414.26 feet along same to a point;

| | | |
|-----|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 35. | 22° 18' | 545.98 feet along same to a point; |
| 36. | 6° 29' | 302.12 feet along same to a point; |
| 37. | 342° 52' | 171.59 feet along same to a point; |
| 38. | 313° 48' | 23.52 feet along same to a point; |
| 39. | Thence along same on curve to the right, having a radius of 597.00 feet, the chord azimuth and distance being: 322° 58' 30" 190.38 feet to a point; | |
| 40. | 332° 09' | 147.95 feet along same to a point; |
| 41. | 286° 50' | 160.00 feet along same to a point; |
| 42. | 246° 40' | 198.00 feet along same to a point; |
| 43. | 326° 00' | 559.72 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point; |
| 44. | 315° 00' | 212.40 feet along same to a point; |
| 45. | 342° 00' | 98.17 feet along same to a point; |
| 46. | 59° 30' | 228.90 feet along same to a point; |
| 47. | 8° 00' | 87.96 feet along same to a point; |
| 48. | 308° 20' | 125.73 feet along same to a point; |
| 49. | 240° 00' | 48.91 feet along same to a point; |
| 50. | 330° 00' | 90.84 feet along same to a point; |
| 51. | 240° 00' | 128.41 feet along same to a point; |
| 52. | 342° 00' | 70.47 feet along same to a point; |
| 53. | 290° 00' | 250.66 feet along same to a point; |

| | | | | |
|-----|------|---------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 54. | 335° | 30' | 1,577.46 feet | along same to a point; |
| 55. | 344° | 00' | 310.62 feet | along same to a point; |
| 56. | 324° | 00' | 182.30 feet | along same to a point; |
| 57. | 357° | 00' | 319.88 feet | along same to a point; |
| 58. | 319° | 00' | 348.47 feet | along same to a point; |
| 59. | 342° | 00' | 223.65 feet | along same to a point; |
| 60. | 336° | 00' | 498.25 feet | along same to a point; |
| 61. | 54° | 00' | 1,119.38 feet | along same to a point; |
| 62. | 322° | 55' | 74.42 feet | along same to a point; |
| 63. | 275° | 40' | 248.91 feet | along same to a point; |
| 64. | 345° | 00' | 500.17 feet | along same to a point; |
| 65. | 351° | 00' | 289.47 feet | along same to a point; |
| 66. | 65° | 59' 38" | 55.00 feet | along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 3 of Honokahua Wells Subdivision to a point; |
| 67. | 335° | 59' 38" | 75.00 feet | along same to a point; |
| 68. | 245° | 59' 38" | 110.72 feet | along same to a point; |
| 69. | 324° | 00' | 622.16 feet | along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point; |
| 70. | 0° | 00' | 201.70 feet | along same to a point; |
| 71. | 320° | 00' | 913.05 feet | along same to a point; |

| | | | | |
|-----|------|---------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 72. | 0° | 00' | 353.54 feet | along same to a point; |
| 73. | 326° | 56' | 1,314.13 feet | along same to a point; |
| 74. | 31° | 44' 38" | 417.99 feet | along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision and along Royal Patent 1663, Apana 1, Land Commission Award 5524 Part 1 to L. Konia to a point; |
| 75. | 112° | 03' | 592.18 feet | along the remainder of Government (Crown) Land of Napili 4 and 5 to a point; |
| 76. | 124° | 33' | 719.66 feet | along same to a point; |
| 77. | 109° | 42' | 490.74 feet | along same to a point; |
| 78. | 120° | 31' | 730.42 feet | along same to a point; |
| 79. | 163° | 42' | 153.49 feet | along same to a point; |
| 80. | 111° | 15' | 194.60 feet | along Government (Crown) Land of Napili 4 and 5 to a point; |
| 81. | 77° | 29' | 118.47 feet | along the remainder of Government (Crown) Land of Napili 4 and 5 to a point; |
| 82. | 72° | 43' | 366.22 feet | along same to a point; |
| 83. | 208° | 00' | 291.16 feet | along same to a point; |
| 84. | 110° | 45' | 201.65 feet | along Government (Crown) Land of Napili 4 and 5 to a point; |
| 85. | 28° | 00' | 300.40 feet | along the remainder of Government (Crown) Land of Napili 4 and 5 to a point; |
| 86. | 113° | 05' | 819.15 feet | along same to a point; |
| 87. | 139° | 00' | 498.66 feet | along same to a point; |

| | | | |
|------|------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 88. | 187° | 24' | 413.29 feet along same to a point; |
| 89. | 123° | 17' | 398.65 feet along same to a point; |
| 90. | 123° | 00' 19" | 179.10 feet along same to a point; |
| 91. | 120° | 37' | 615.99 feet along same to a point; |
| 92. | 124° | 03' | 211.54 feet along same to a point; |
| 93. | 124° | 18' | 183.61 feet along same to a point; |
| 94. | 104° | 00' | 223.83 feet along same to a point; |
| 95. | 131° | 00' | 366.75 feet along same to a point; |
| 96. | 154° | 40' | 304.42 feet along same to a point; |
| 97. | 138° | 52' | 299.20 feet along same to a point; |
| 98. | 138° | 58' | 89.48 feet along same to a point; |
| 99. | 164° | 53' | 465.29 feet along same to a point; |
| 100. | 123° | 34' | 482.89 feet along same to a point; |
| 101. | 126° | 07' | 419.09 feet along same to a point; |
| 102. | 116° | 02' | 417.86 feet along same to a point; |
| 103. | 121° | 21' | 158.74 feet along same to a point; |
| 104. | 119° | 01' | 285.93 feet along same to a point; |
| 105. | 106° | 32' | 224.46 feet along same to a point; |
| 106. | 125° | 00' | 454.04 feet along same to the point of beginning and containing a Gross Area of 925.271 Acres, excepting and excluding therefrom Lot 1 (Napili Well "C") (0.342 Acre) and Lot 2 (Honokahua Well "A") (0.129 Acre) as described below, for a Net Area of 924.800 Acres. |

Lot 1 (Napili Well "C")

Land situated on the southeasterly side of Honoapiilani Highway (F.A.P No. RF-030-1(3)), at Napili 2 & 3, Lahaina, Maui, Hawaii

Being a portion of Royal Patent 1663, Land Commission Award 5524 Apana 1 to L. Konia

Beginning at a point at the southwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 9,590.79 feet South and 8,749.90 feet East and running by azimuths measured clockwise from True South:

1. 205° 29' 38" 95.00 feet along the remainder of the Royal Patent 1663 Apana 1, Land Commission Award 5524 Apana 1 to L. Konia, being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point;
2. 226° 51' 38" 74.51 feet along same to a point;
3. 295° 29' 38" 56.50 feet along same to a point;
4. 340° 54' 38" 35.94 feet along same to a point;
5. 25° 29' 38" 30.78 feet along same to a point;
6. 45° 59' 38" 59.90 feet along same to a point;
7. 25° 29' 38" 42.00 feet along same to a point;
8. 70° 29' 38" 14.00 feet along same to a point;
9. 115° 29' 38" 78.00 feet along same to the point of beginning and containing an Area of 14,907 Square Feet or 0.342 Acre.

Lot 2 (Honokahua Well "A")

Land situated on the southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)), at Honokahua, Lahaina, Maui, Hawaii

Being a portion of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21)

Beginning at a point at the southwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA", being 8,851.72 feet South and 8,775.18 feet East and running by azimuths measured clockwise from True South:

1. 209° 29' 38" 70.00 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point;
2. 299° 29' 38" 80.00 feet along same to a point;
3. 29° 29' 38" 70.00 feet along same to a point;
4. 119° 29' 38" 80.00 feet along same to the point of beginning and containing an Area of 5,600 Square Feet or 0.129 Acre.

TOGETHER WITH, the following:

1. Existing Waterline Easements, affecting portions of Honoapiilani Highway (F.A.P. RF-030-1 (3)), in favor of Kapalua Water Company, Ltd. and Maui Land & Pineapple Company, Inc.
2. Existing Golf Course Easements "A" to "D", inclusive, affecting portions of Honoapiilani Highway (F.A.P. RF-030-1 (3)), in favor of Maui Land & Pineapple Company, Inc.

SUBJECT, HOWEVER, to the following:

1. A Restriction of the Vehicular Access Right along Honoapiilani Highway (F.A.P. RF-030-1(3)).
2. Existing Electrical and Telephone Easements E-14 to E-17 in favor of Maui Electric Company, Ltd. and Verizon Hawaii Inc.
3. Existing Slope Easements "S-2" and "S-4", in favor of the State of Hawaii.
4. An existing Electrical and Telephone Easement (20 ft. wide) in favor of Maui Electric Company, Ltd. and Verizon Hawaii, Inc.
5. Existing Electrical and Telephone Easements "B" and "C", in favor of Maui Electric Company, Ltd. and Verizon Hawaii, Inc.
6. Existing Waterline Easements "A", "B" and "C" (20 ft. wide), in favor of the Board of Water Supply, County of Maui.
7. An existing Access Easement 4 in favor of Lot 51 of the Plantation at Kapalua (File Plan 2006).
8. A portion of existing Waterline Easement 12 in favor of Kapalua Water Company, Ltd.
9. Existing Electrical Easements E-9 and E-10 in favor of Maui Electric Company, Ltd. and Verizon Hawaii, Inc.
10. A Perpetual Non-Exclusive Appurtenant Existing Underground Tunnel Deed: Territory of Hawaii to Baldwin Packers, Ltd.

NOTE: This description has been prepared solely for use by the Owners and shall not be construed as a description of a parcel of land separate from Government (Crown) Land of Napili 4 and 5. Only after required approvals from governmental agencies have been granted, can it be considered as a parcel of land separate from Government (Crown) Land of Napili 4 and 5.

EXHIBIT "B"

CONDITIONS OF ZONING

1. That Best Management Practices designed to prevent infiltration of contaminants from reaching the underlying aquifer shall be incorporated into the design and construction of the project. Additionally, Maui Land & Pineapple Company, Inc. shall promulgate preventative measures to minimize potential groundwater contamination and provide copies of the preventative measures to new homeowners.
2. That, as represented by Maui Land & Pineapple Company, Inc., water conservation techniques shall be incorporated into the project's design, construction and operation to discourage excessive use of water. Water conservation techniques shall include, but not be limited to, the installing and maintaining of low-flow fixtures and devices, limiting irrigation of turf area, preventing over watering by automated systems, eliminating single-pass cooling, using native plants for landscaping, and installing meters to potable and non-potable water systems. In addition, only non-potable water shall be used for irrigation of any golf course within the project.
3. That Maui Land & Pineapple Company, Inc. shall submit a Preservation Plan for the 39 historic sites recommended for preservation to the State Historic Preservation Division for approval and obtain State Historic Preservation Division approval for the Preservation Plan prior to the commencement of any ground altering activities. Maui Land & Pineapple Company, Inc. must obtain written verification from the State Historic Preservation Division that interim protection measures are in place prior to the commencement of any ground altering activities. Maui Land & Pineapple Company, Inc. must also obtain written verification from the State Historic Preservation Division that the interim protection measures have been successfully implemented, a copy of which shall be submitted to the County.
4. That Maui Land & Pineapple Company, Inc. shall obtain approvals of the Maui/Lanai Islands Burial Council and the State Historic Preservation Division Burial Program for its Preservation Plan or relocation of historic sites with burial components prior to the commencement of any land altering activities.

5. That Maui Land & Pineapple Company, Inc. shall notify potential lot owners of the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, which limits the circumstances under which normal farming activities may be considered a nuisance.
6. That Maui Land & Pineapple Company, Inc. shall contribute to the development, funding, and/or construction of school facilities on a fair share basis pursuant to the Education Contribution Agreement for Kapalua Mauka between Kapalua Land Company, Ltd. and the State of Hawaii Department of Education dated July 10, 2003.
7. That Maui Land & Pineapple Company, Inc. shall implement, per State Department of Transportation standards, median left-turn lanes on Honoapiilani Highway into the West Maui Project District 2 (Kapalua Mauka) development at each of the proposed access intersections at Maui Land & Pineapple Company, Inc.'s sole expense.
8. That Maui Land & Pineapple Company, Inc. shall implement, per State Department of Transportation standards, appropriate right-turn deceleration lanes at each of the three accesses to the West Maui Project District 2 (Kapalua Mauka) development at Maui Land & Pineapple Company, Inc.'s sole expense.
9. That Maui Land & Pineapple Company, Inc. shall install appropriate signing and pavement markings at each of the three accesses to the West Maui Project District 2 (Kapalua Mauka) development at Maui Land & Pineapple Company, Inc.'s sole expense.
10. That, as represented by Maui Land & Pineapple Company, Inc., a voluntary contribution for road and traffic improvements in the West Maui Community Plan region shall be provided by Maui Land & Pineapple Company, Inc. to the County of Maui in the amount of \$3,500.00 or the prevailing rate in effect at the time of final subdivision approval, whichever is greater, per dwelling unit in the West Maui Project District 2 (Kapalua Mauka). This contribution shall be made prior to issuance of a building permit. An agreement between Maui Land & Pineapple Company, Inc. and the County of Maui shall be executed and recorded setting forth the terms and conditions of the voluntary contribution prior to Phase II Project District approval.

11. That Maui Land & Pineapple Company, Inc. shall provide at least one affordable dwelling unit for every four market-priced dwelling units that are constructed. Affordable dwelling units will be offered only to full-time residents of the County of Maui to the maximum extent permitted by law.
 - a. That the affordable dwelling units must be provided as follows:
 - (i) Forty (40) affordable dwelling units must be completed prior to or concurrently with the completion of the first market-priced dwelling unit.
 - (ii) Thereafter, one affordable dwelling unit shall be completed prior to or concurrently with the completion of every four market-priced dwelling units.
 - (iii) Paragraphs (i) and (ii) above do not alter the maximum potential affordable housing requirement of 173 units.
 - b. That all affordable dwelling units must be located within the West Maui Community Plan area.
 - c. That affordable dwelling units offered for sale shall be offered to qualified, full-time Maui County resident owner-occupants only and shall be maintained as affordable for a 15-year minimum period through resale restrictions and buy-back clauses.
 - d. That affordable dwelling units offered for rent shall be offered to qualified full-time Maui County resident occupants only and shall be maintained as affordable in perpetuity.
 - e. That affordable dwelling units must be offered for an initial minimum period of 120 days to potential purchasers or renters in the designated income bracket as shown on the attached matrix. If none qualify to purchase or rent within that time period, the units shall be offered at the same price to potential purchasers or renters in each of the higher brackets for a period of 30 days for each bracket, in order, until a qualified purchaser or renter is found. If no purchasers qualify in any income bracket up through the highest affordable bracket, then for a subsequent 120-day period, the affordable dwelling unit shall be

offered for sale to the County of Maui at the same price. If the County does not exercise the right to purchase within 120 days, the units may be offered at the market rate, and upon sale, the County shall receive 80 percent of the difference between the affordable offering price and the actual market-rate sales price of the unit, for deposit into a fund or funds established by the County for affordable housing purposes. Affordable rental units shall not be rented to persons with incomes above the highest affordable bracket. If an existing renter's income rises above the highest affordable bracket, the renter shall be permitted to remain in the dwelling unit until the expiration of the renter's lease, not to exceed 12 months.

- f. That the affordable dwelling units required for this project shall not be counted towards the affordable housing requirement for any other project.
- g. That, prior to final subdivision approval, any affordable housing policies adopted by the County of Maui which would result in a greater number of affordable dwelling units shall apply.
- h. That Maui Land & Pineapple Company, Inc. shall provide annual status reports to the Director of Housing and Human Concerns and the Council for all affordable dwelling units, commencing within one year of the effective date of this ordinance. The status reports shall include: (1) the number of affordable dwelling units and market-priced dwelling units proposed for development; (2) the number of affordable dwelling units and market-priced dwelling units completed; (3) the number of affordable dwelling units and market-priced dwelling units sold or rented; (4) for each unit, the sales price or rental price, square footage, number of bedrooms and baths, and lot size; (5) the income bracket for each purchaser or renter of an affordable dwelling unit; (6) the number of units sold or rented to individuals in each category on Maui Land & Pineapple Company, Inc.'s prioritization list; (7) for prioritized employees, the length of time working for that employer; (8) the number of units sold or rented to individuals who are not qualified residents as defined in the housing agreement; (9) the number of units offered for resale or rental and the number of units sold on the resale market, if any, by both the developer as well as any other party; and (10)

any buy-back provisions, owner-occupancy requirements, or ohana-unit restrictions that apply.

- i. That Maui Land & Pineapple Company, Inc. shall provide a voluntary contribution of \$500,000 to a first-time homebuyers and rental assistance fund that will be held in escrow or trust and administered by Maui Land & Pineapple Company, Inc. for its employees who earn up to 120 percent of the median income. The contribution shall be made prior to the completion of the first market-priced dwelling unit. Maui Land & Pineapple Company, Inc. shall provide annual updates to the Director of Housing and Human Concerns and the Council.
12. That Maui Land & Pineapple Company, Inc. shall immediately petition the State Commission on Water Resource Management to establish in-stream flow standards for Honokohau and Honolua Streams in accordance with the State Water Code. Any data necessary to support the petition will be paid for by Maui Land & Pineapple Company, Inc.
13. That Maui Land & Pineapple Company, Inc. shall signalize the intersection at Honoapiilani Highway and Office Road, when warranted.

Affordable Unit Matrix

| | Percentage of Median Income | | | | | | | | | Total Units |
|--------------------------------------|-----------------------------|------------|------------|------------|-------------|--------------|--------------|--------------|--------------|-------------|
| | 60% or less | 61% to 70% | 71% to 80% | 81% to 90% | 91% to 100% | 101% to 110% | 111% to 120% | 121% to 130% | 131% to 140% | |
| Type of Unit | | | | | | | | | | |
| 1-bedroom 600 square-foot rental | 20 | | | | | | | | | 20 |
| 2-bedroom 750 square-foot rental | | 25 | 34 | 22 | | | | | | 81 |
| 3-bedroom 1,000 square-foot rental | | | | | 15 | 9 | | | | 24 |
| 2-bedroom 1,200 square-foot for sale | | | | | | 10 | 14 | | | 24 |
| 3-bedroom 1,350 square-foot for sale | | | | | | | | 10 | | 10 |
| 3-bedroom 1,400 square-foot for sale | | | | | | | | | 14 | 14 |
| | | | | | | | | | | |
| Total Units | 20 | 25 | 34 | 22 | 15 | 19 | 14 | 10 | 14 | 173 |

THE ORIGINAL OF THE DOCUMENT
RECORDED AT THE OFFICE OF THE
STATE ARCHIVES

BUREAU OF LAND MANAGEMENT

Doc 2006-028545
FEB 13, 2006 08:02 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: 22

Affects Tax Map Key (2) 4-2-001:042, (2) 4-3-001:006 (por.), & (2) 4-3-001:008 (por.)

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL
ZONING (AMENDED AND RESTATED)

THIS INDENTURE, made this 6th day of February, 2006, by Maui Land & Pineapple Company, Inc., a Hawaii corporation, whose principal place of business is located in Kahului, Maui, Hawaii, and whose mailing address is P. O. Box 187, Kahului, Hawaii 96733, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Kapalua, Maui, Hawai'i, comprised of approximately 924.8 acres, and identified for real property tax purposes by Tax Map Key No(s). (2) 4-2-001:042, (2) 4-3-001:006 (por.), and (2) 4-3-001:008 (por.), hereinafter collectively referred to as "PARCEL" (or "PROPERTY").

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i, hereinafter referred to as "Council", is considering the establishment of zoning for the Parcel, comprised of approximately 924.8 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-989, 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. 06-1, 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 Parcel, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which shall be effective as to and shall run with the land as to the Parcel, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawai'i, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assigns; that the acquisition of any right, title or interest in or with respect to the Parcel by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Parcel the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration;

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

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

5. That the Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of West Maui Project

District 2 (Kapalua Mauka) 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 Parcel in conformance with the conditions set forth in Exhibit "2", which is attached hereto and made a part hereof and which shall be made a part of the 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;

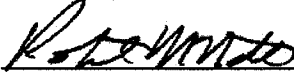
AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors and any other persons 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 Unilateral Agreement amends and restates the Unilateral Agreement dated December 23, 2005, recorded in the State of Hawaii Bureau of Conveyances as Document No. 2006-007054, in its entirety.

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

DECLARANT:

MAUI LAND & PINEAPPLE
COMPANY, INC.

By 
Name: Robert McNatt
Its Executive Vice President

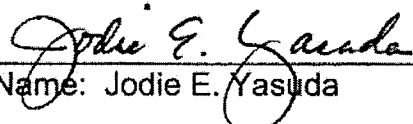
By 
Name: Ryan Churchill
Its Vice President

APPROVED AS TO FORM AND LEGALITY:


JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
)
COUNTY OF MAUI) ss.

On this 6th day of February, 2006, before me personally appeared Robert McNatt and Ryan Churchill, to me personally known, who, being by me duly sworn, did say that such persons are the Executive Vice President and the Vice President, respectively, of Maui Land & Pineapple Company, Inc., and that said instrument was duly authorized and executed on behalf of said company, and said officers further acknowledged said instrument to be the free act and deed of said company.


Name: Jodie E. Yasuda

Notary Public, State of Hawaii

L.S.

My commission expires: July 8, 2009

"EXHIBIT 1"

Kapalua Project District 2
Description of Perimeter Boundary

Land situated on the southeasterly side of Honoapiilani Highway, (F.A.P. No. RF-030-1(3)), at Honokahua, Napili 2 and 3, Napili 4 and 5, Lahaina, Maui, Hawaii

Being portions of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21), Royal Patent 1663, Land Commission Award 5524, Apana 1 to L. Konia

Beginning at a point at the southwesterly corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 5,756.60 feet South and 2,710.69 feet East and running by azimuths measured clockwise from True South:

1. 220° 37' 19" 222.56 feet along the southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)) to a point;
2. 310° 37' 19" 20.00 feet along same to a point;
3. 220° 37' 19" 356.68 feet along same to a point;
4. 130° 37' 19" 20.00 feet along same to a point;
5. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 130° 37' 19", and the point of tangency azimuth from the radial point being: 134° 02' 45", having a radius of 6,850.23 feet, the chord azimuth and distance being: 222° 20' 02" 409.30 feet to a point;
6. 239° 43' 01" 114.35 feet along same to a point;

7. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 134° 58' 15", and the point of tangency azimuth from the radial point being: 136° 15' 50", having a radius of 6,820.23 feet, the chord azimuth and distance being: 225° 37' 02.5" 153.92 feet to a point;
8. 178° 22' 04" 107.32 feet along same to a point;
9. Thence along same on a curve to the right with the point of curvature azimuth from the radial point being: 136° 51' 41", and the point of tangency azimuth from the radial point being: 140° 35' 19", having a radius of 6,900.23 feet, the chord azimuth and distance being: 228° 43' 30" 448.80 feet to a point;
10. 320° 35' 19" 50.00 feet along same to a point;
11. 230° 35' 19" 630.62 feet along same to a point;
12. 213° 14' 05" 167.63 feet along same to a point;
13. 230° 35' 19" 223.80 feet along same to a point;
14. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 320° 35' 19", and the point of tangency azimuth from the radial point being: 318° 56' 28", having a radius of 2,750.09 feet, the chord azimuth and distance being: 229° 45' 53.5" 79.07 feet to a point;
15. 318° 56' 28" 20.00 feet along same to a point;

16. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being:
 318° 56' 28", and the point of tangency azimuth from the radial point being:
 317° 51' 36", having a radius of 2,770.09 feet, the chord azimuth and distance being:
 228° 24' 02" 52.27 feet to a point;
17. 317° 51' 36" 30.00 feet along same to a point;
18. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being:
 317° 51' 36", and the point of tangency azimuth from the radial point being:
 312° 27' 18", having a radius of 2,800.09 feet, the chord azimuth and distance being:
 225° 09' 27" 264.05 feet to a point;
19. 132° 27' 18" 30.00 feet along same to a point;
20. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being:
 312° 27' 18", and the point of tangency azimuth from the radial point being:
 309° 12' 43", having a radius of 2,770.09 feet, the chord azimuth and distance being:
 220° 50' 0.5" 156.77 feet to a point;
21. 129° 12' 43" 30.00 feet along same to a point;

22. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 309° 12' 43", and the point of tangency azimuth from the radial point being: 291° 54' 57", having a radius of 2,740.09 feet, the chord azimuth and distance being: 210° 33' 50" 824.03 feet to a point;
23. 217° 43' 38" 70.35 feet along same to a point;
24. Thence along same on a curve to the left with the point of curvature azimuth from the radial point being: 290° 30' 38", and the point of tangency azimuth from the radial point being: 277° 05' 19", having a radius of 2,760.09 feet, the chord azimuth and distance being: 193° 47' 58.5" 645.09 feet to a point;
25. 187° 05' 19" 1,114.20 feet along same to a point;
26. 277° 05' 19" 10.00 feet along same to a point;
27. 185° 39' 23" 400.13 feet along same to a point;
28. 175° 46' 38" 101.98 feet along same to a point;
29. 187° 05' 19" 518.19 feet along same to a point;
30. 284° 00' 307.46 feet along Lot 49 of The Plantation at Kapalua (File Plan No. 2006) to a point;
31. 328° 38' 787.92 feet along same to a point;
32. 320° 11' 342.84 feet along same to a point;
33. 299° 45' 473.25 feet along same to a point;
34. 294° 02' 414.26 feet along same to a point;

35. 22° 18' 545.98 feet along same to a point;
36. 6° 29' 302.12 feet along same to a point;
37. 342° 52' 171.59 feet along same to a point;
38. 313° 48' 23.52 feet along same to a point;
39. Thence along same on curve to the right, having a radius of
597.00 feet, the chord azimuth
and distance being:
322° 58' 30" 190.38 feet to a
point;
40. 332° 09' 147.95 feet along same to a point;
41. 286° 50' 160.00 feet along same to a point;
42. 246° 40' 198.00 feet along same to a point;
43. 326° 00' 559.72 feet along the remainder of Royal
Patent 2236, Land Commission
Award 8522-B Apana 1 to Kale
Davis (Certificate of
Boundaries No. 21), being also
along Lot 4 of Kapalua Mauka
Large-Lot Subdivision to a
point;
44. 315° 00' 212.40 feet along same to a point;
45. 342° 00' 98.17 feet along same to a point;
46. 59° 30' 228.90 feet along same to a point;
47. 8° 00' 87.96 feet along same to a point;
48. 308° 20' 125.73 feet along same to a point;
49. 240° 00' 48.91 feet along same to a point;
50. 330° 00' 90.84 feet along same to a point;
51. 240° 00' 128.41 feet along same to a point;
52. 342° 00' 70.47 feet along same to a point;
53. 290° 00' 250.66 feet along same to a point;

| | | | | |
|-----|------|---------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 54. | 335° | 30' | 1,577.46 feet | along same to a point; |
| 55. | 344° | 00' | 310.62 feet | along same to a point; |
| 56. | 324° | 00' | 182.30 feet | along same to a point; |
| 57. | 357° | 00' | 319.88 feet | along same to a point; |
| 58. | 319° | 00' | 348.47 feet | along same to a point; |
| 59. | 342° | 00' | 223.65 feet | along same to a point; |
| 60. | 336° | 00' | 498.25 feet | along same to a point; |
| 61. | 54° | 00' | 1,119.38 feet | along same to a point; |
| 62. | 322° | 55' | 74.42 feet | along same to a point; |
| 63. | 275° | 40' | 248.91 feet | along same to a point; |
| 64. | 345° | 00' | 500.17 feet | along same to a point; |
| 65. | 351° | 00' | 289.47 feet | along same to a point; |
| 66. | 65° | 59' 38" | 55.00 feet | along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 3 of Honokahua Wells Subdivision to a point; |
| 67. | 335° | 59' 38" | 75.00 feet | along same to a point; |
| 68. | 245° | 59' 38" | 110.72 feet | along same to a point; |
| 69. | 324° | 00' | 622.16 feet | along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point; |
| 70. | 0° | 00' | 201.70 feet | along same to a point; |
| 71. | 320° | 00' | 913.05 feet | along same to a point; |

| | | | | |
|-----|------|---------|---------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 72. | 0° | 00' | 353.54 feet | along same to a point; |
| 73. | 326° | 56' | 1,314.13 feet | along same to a point; |
| 74. | 31° | 44' 38" | 417.99 feet | along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision and along Royal Patent 1663, Apana 1, Land Commission Award 5524 Part 1 to L. Konia to a point; |
| 75. | 112° | 03' | 592.18 feet | along the remainder of Government (Crown) Land of Napili 4 and 5 to a point; |
| 76. | 124° | 33' | 719.66 feet | along same to a point; |
| 77. | 109° | 42' | 490.74 feet | along same to a point; |
| 78. | 120° | 31' | 730.42 feet | along same to a point; |
| 79. | 163° | 42' | 153.49 feet | along same to a point; |
| 80. | 111° | 15' | 194.60 feet | along Government (Crown) Land of Napili 4 and 5 to a point; |
| 81. | 77° | 29' | 118.47 feet | along the remainder of Government (Crown) Land of Napili 4 and 5 to a point; |
| 82. | 72° | 43' | 366.22 feet | along same to a point; |
| 83. | 208° | 00' | 291.16 feet | along same to a point; |
| 84. | 110° | 45' | 201.65 feet | along Government (Crown) Land of Napili 4 and 5 to a point; |
| 85. | 28° | 00' | 300.40 feet | along the remainder of Government (Crown) Land of Napili 4 and 5 to a point; |
| 86. | 113° | 05' | 819.15 feet | along same to a point; |
| 87. | 139° | 00' | 498.66 feet | along same to a point; |

| | | | |
|------|------|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 88. | 187° | 24' | 413.29 feet along same to a point; |
| 89. | 123° | 17' | 398.65 feet along same to a point; |
| 90. | 123° | 00' 19" | 179.10 feet along same to a point; |
| 91. | 120° | 37' | 615.99 feet along same to a point; |
| 92. | 124° | 03' | 211.54 feet along same to a point; |
| 93. | 124° | 18' | 183.61 feet along same to a point; |
| 94. | 104° | 00' | 223.83 feet along same to a point; |
| 95. | 131° | 00' | 366.75 feet along same to a point; |
| 96. | 154° | 40' | 304.42 feet along same to a point; |
| 97. | 138° | 52' | 299.20 feet along same to a point; |
| 98. | 138° | 58' | 89.48 feet along same to a point; |
| 99. | 164° | 53' | 465.29 feet along same to a point; |
| 100. | 123° | 34' | 482.89 feet along same to a point; |
| 101. | 126° | 07' | 419.09 feet along same to a point; |
| 102. | 116° | 02' | 417.86 feet along same to a point; |
| 103. | 121° | 21' | 158.74 feet along same to a point; |
| 104. | 119° | 01' | 285.93 feet along same to a point; |
| 105. | 106° | 32' | 224.46 feet along same to a point; |
| 106. | 125° | 00' | 454.04 feet along same to the point of beginning and containing a Gross Area of 925.271 Acres, excepting and excluding therefrom Lot 1 (Napili Well "C") (0.342 Acre) and Lot 2 (Honokahua Well "A") (0.129 Acre) as described below, for a Net Area of 924.800 Acres. |

Lot 1 (Napili Well "C")

Land situated on the southeasterly side of Honoapiilani Highway (F.A.P No. RF-030-1(3)), at Napili 2 & 3, Lahaina, Maui, Hawaii

Being a portion of Royal Patent 1663, Land Commission Award 5524 Apana 1 to L. Konia

Beginning at a point at the southwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA" being 9,590.79 feet South and 8,749.90 feet East and running by azimuths measured clockwise from True South:

1. 205° 29' 38" 95.00 feet along the remainder of the Royal Patent 1663 Apana 1, Land Commission Award 5524 Apana 1 to L. Konia, being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point;
2. 226° 51' 38" 74.51 feet along same to a point;
3. 295° 29' 38" 56.50 feet along same to a point;
4. 340° 54' 38" 35.94 feet along same to a point;
5. 25° 29' 38" 30.78 feet along same to a point;
6. 45° 59' 38" 59.90 feet along same to a point;
7. 25° 29' 38" 42.00 feet along same to a point;
8. 70° 29' 38" 14.00 feet along same to a point;
9. 115° 29' 38" 78.00 feet along same to the point of beginning and containing an Area of 14,907 Square Feet or 0.342 Acre.

Lot 2 (Honokahua Well "A")

Land situated on the southeasterly side of Honoapiilani Highway (F.A.P. No. RF-030-1(3)), at Honokahua, Lahaina, Maui, Hawaii

Being a portion of Royal Patent 2236, Land Commission Award 8522-B, Apana 1 to Kale Davis (Certificate of Boundaries No. 21)

Beginning at a point at the southwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "HAWEA", being 8,851.72 feet South and 8,775.18 feet East and running by azimuths measured clockwise from True South:

1. 209° 29' 38" 70.00 feet along the remainder of Royal Patent 2236, Land Commission Award 8522-B Apana 1 to Kale Davis (Certificate of Boundaries No. 21), being also along Lot 4 of Kapalua Mauka Large-Lot Subdivision to a point;
2. 299° 29' 38" 80.00 feet along same to a point;
3. 29° 29' 38" 70.00 feet along same to a point;
4. 119° 29' 38" 80.00 feet along same to the point of beginning and containing an Area of 5,600 Square Feet or 0.129 Acre.

TOGETHER WITH, the following:

1. Existing Waterline Easements, affecting portions of Honoapiilani Highway (F.A.P. RF-030-1 (3)), in favor of Kapalua Water Company, Ltd. and Maui Land & Pineapple Company, Inc.
2. Existing Golf Course Easements "A" to "D", inclusive, affecting portions of Honoapiilani Highway (F.A.P. RF-030-1 (3)), in favor of Maui Land & Pineapple Company, Inc.

SUBJECT, HOWEVER, to the following:

1. A Restriction of the Vehicular Access Right along Honoapiilani Highway (F.A.P. RF-030-1(3)).
2. Existing Electrical and Telephone Easements E-14 to E-17 in favor of Maui Electric Company, Ltd. and Verizon Hawaii Inc.
3. Existing Slope Easements "S-2" and "S-4", in favor of the State of Hawaii.
4. An existing Electrical and Telephone Easement (20 ft. wide) in favor of Maui Electric Company, Ltd. and Verizon Hawaii, Inc.
5. Existing Electrical and Telephone Easements "B" and "C", in favor of Maui Electric Company, Ltd. and Verizon Hawaii, Inc.
6. Existing Waterline Easements "A", "B" and "C" (20 ft. wide), in favor of the Board of Water Supply, County of Maui.
7. An existing Access Easement 4 in favor of Lot 51 of the Plantation at Kapalua (File Plan 2006).
8. A portion of existing Waterline Easement 12 in favor of Kapalua Water Company, Ltd.
9. Existing Electrical Easements E-9 and E-10 in favor of Maui Electric Company, Ltd. and Verizon Hawaii, Inc.
10. A Perpetual Non-Exclusive Appurtenant Existing Underground Tunnel Deed: Territory of Hawaii to Baldwin Packers, Ltd.

NOTE: This description has been prepared solely for use by the Owners and shall not be construed as a description of a parcel of land separate from Government (Crown) Land of Napili 4 and 5. Only after required approvals from governmental agencies have been granted, can it be considered as a parcel of land separate from Government (Crown) Land of Napili 4 and 5.

EXHIBIT "2"

CONDITIONS OF ZONING

1. That Best Management Practices designed to prevent infiltration of contaminants from reaching the underlying aquifer shall be incorporated into the design and construction of the project. Additionally, Maui Land & Pineapple Company, Inc. shall promulgate preventative measures to minimize potential groundwater contamination and provide copies of the preventative measures to new homeowners.
2. That, as represented by Maui Land & Pineapple Company, Inc., water conservation techniques shall be incorporated into the project's design, construction and operation to discourage excessive use of water. Water conservation techniques shall include, but not be limited to, the installing and maintaining of low-flow fixtures and devices, limiting irrigation of turf area, preventing over watering by automated systems, eliminating single-pass cooling, using native plants for landscaping, and installing meters to potable and non-potable water systems. In addition, only non-potable water shall be used for irrigation of any golf course in the project.
3. That Maui Land & Pineapple Company, Inc. shall submit a Preservation Plan for the 39 historic sites recommended for preservation to the State Historic Preservation Division for approval and obtain State Historic Preservation Division approval for the Preservation Plan prior to the commencement of any ground altering activities. Maui Land & Pineapple Company, Inc. must obtain written verification from the State Historic Preservation Division that interim protection measures are in place prior to the commencement of any ground altering activities. Maui Land & Pineapple Company, Inc. must also obtain written verification from the State Historic Preservation Division that the interim protection measures have been successfully implemented, a copy of which shall be submitted to the County.
4. That Maui Land & Pineapple Company, Inc. shall obtain approvals of the Maui/Lanai Islands Burial Council and the State Historic Preservation Division Burial Program for its Preservation Plan or relocation of historic sites with burial

components prior to the commencement of any land altering activities.

5. That Maui Land & Pineapple Company, Inc. shall notify potential lot owners of the Hawaii Right-to-Farm Act, Chapter 165, Hawaii Revised Statutes, which limits the circumstances under which normal farming activities may be considered a nuisance.
6. That Maui Land & Pineapple Company, Inc. shall contribute to the development, funding, and/or construction of school facilities on a fair share basis pursuant to the Education Contribution Agreement for Kapalua Mauka between Kapalua Land Company, Ltd. and the State of Hawaii Department of Education dated July 10, 2003.
7. That Maui Land & Pineapple Company, Inc. shall implement, per State Department of Transportation standards, median left-turn lanes on Honoapiilani Highway into the West Maui Project District 2 (Kapalua Mauka) development at each of the proposed access intersections at Maui Land & Pineapple Company, Inc.'s sole expense.
8. That Maui Land & Pineapple Company, Inc. shall implement, per State Department of Transportation standards, appropriate right-turn deceleration lanes at each of the three accesses to the West Maui Project District 2 (Kapalua Mauka) development at Maui Land & Pineapple Company, Inc.'s sole expense.
9. That Maui Land & Pineapple Company, Inc. shall install appropriate signing and pavement markings at each of the three accesses to the West Maui Project District 2 (Kapalua Mauka) development at Maui Land & Pineapple Company, Inc.'s sole expense.
10. That, as represented by Maui Land & Pineapple Company, Inc., a voluntary contribution for road and traffic improvements in the West Maui Community Plan region shall be provided by Maui Land & Pineapple Company, Inc. to the County of Maui in the amount of \$3,500.00 or the prevailing rate in effect at the time of final subdivision approval, whichever is greater, per dwelling unit in the West Maui Project District 2 (Kapalua Mauka). This contribution shall be made prior to issuance of a building permit. An agreement between Maui Land & Pineapple Company, Inc. and the County of Maui shall be executed and recorded

setting forth the terms and conditions of the voluntary contribution prior to Phase II Project District approval.

11. That Maui Land & Pineapple Company, Inc. shall provide at least one affordable dwelling unit for every four market-priced dwelling units that are constructed. Affordable dwelling units will be offered only to full-time residents of the County of Maui to the maximum extent permitted by law.

a. That the affordable dwelling units must be provided as follows:

(i) Forty (40) affordable dwelling units must be completed prior to or concurrently with the completion of the first market-priced dwelling unit.

(ii) Thereafter, one affordable dwelling unit shall be completed prior to or concurrently with the completion of every four market-priced dwelling units.

(iii) Paragraphs (i) and (ii) above do not alter the maximum potential affordable housing requirement of 173 units.

b. That all affordable dwelling units must be located within the West Maui Community Plan area.

c. That affordable dwelling units offered for sale shall be offered to qualified, full-time Maui County resident owner-occupants only and shall be maintained as affordable for a 15-year minimum period through resale restrictions and buy-back clauses.

d. That affordable dwelling units offered for rent shall be offered to qualified full-time Maui County resident occupants only and shall be maintained as affordable in perpetuity.

e. That affordable dwelling units must be offered for an initial minimum period of 120

days to potential purchasers or renters in the designated income bracket as shown on the attached matrix. If none qualify to purchase or rent within that time period, the units shall be offered at the same price to potential purchasers or renters in each of the higher brackets for a period of 30 days for each bracket, in order, until a qualified purchaser or renter is found. If no purchasers qualify in any income bracket up through the highest affordable bracket, then for a subsequent 120-day period, the affordable dwelling unit shall be offered for sale to the County of Maui at the same price. If the County does not exercise the right to purchase within 120 days, the units may be offered at market rate, and upon sale, the County shall receive 80 percent of the difference between the affordable offering price and the actual market-rate sales price of the unit, for deposit into a fund or funds established by the County for affordable housing purposes. Affordable rental units shall not be rented to persons with incomes above the highest affordable bracket. If an existing renter's income rises above the highest affordable bracket, the renter shall be permitted to remain in the dwelling unit until the expiration of the renter's lease, not to exceed 12 months.

- f. That the affordable dwelling units required for this project shall not be counted towards the affordable housing requirement for any other project.
- g. That, prior to final subdivision approval, any affordable housing policies adopted by the County of Maui which would result in a greater number of affordable dwelling units shall apply.
- h. That Maui Land & Pineapple Company, Inc. shall provide annual status reports to the Director of Housing and Human Concerns and the Council for all affordable dwelling units, commencing within one year of the

effective date of this ordinance. The status reports shall include: (1) the number of affordable dwelling units and market-priced dwelling units proposed for development; (2) the number of affordable dwelling units and market-priced dwelling units completed; (3) the number of affordable dwelling units and market-priced dwelling units sold or rented; (4) for each unit, the sales price or rental price, square footage, number of bedrooms and baths, and lot size; (5) the income bracket for each purchaser or renter of an affordable dwelling unit; (6) the number of units sold or rented to individuals in each category on Maui Land & Pineapple Company, Inc.'s prioritization list; (7) for prioritized employees, the length of time working for that employer; (8) the number of units sold or rented to individuals who are not qualified residents as defined in the housing agreement; (9) the number of units offered for resale or rental and the number of units sold on the resale market, if any, by both the developer as well as any other party; and (10) any buy-back provisions, owner-occupancy requirements, or ohana-unit restrictions that apply.

- i. That Maui Land & Pineapple Company, Inc. shall provide a voluntary contribution of \$500,000 to a first-time homebuyers and rental assistance fund that will be held in escrow or trust and administered by Maui Land & Pineapple Company, Inc. for its employees who earn up to 120 percent of the median income. The contribution shall be made prior to the completion of the first market-priced dwelling unit. Maui Land & Pineapple Company, Inc. shall provide annual updates to the Director of Housing and Human Concerns and the Council.
12. That Maui Land & Pineapple Company, Inc. shall immediately petition the State Commission on Water Resource Management to establish in-stream flow standards for Honokohau and Honolulu Streams in accordance with the State Water Code. Any

data necessary to support the petition will be paid for by Maui Land & Pineapple Company, Inc.

13. That Maui Land & Pineapple Company, Inc. shall signalize the intersection at Honoapiilani Highway and Office Road, when warranted.

Affordable Unit Matrix

| | Percentage of Median Income | | | | | | | | | Total Units |
|--------------------------------------|-----------------------------|------------------|------------------|------------------|----------------|--------------------|--------------------|--------------------|--------------------|-------------|
| | 60% or less | 61% to 70% | 71% to 80% | 81% to 90% | 91% to 100% | 101% to 110% | 111% to 120% | 121% to 130% | 131% to 140% | |
| Type of Unit | | | | | | | | | | |
| 1-bedroom 600 square-foot rental | 20 | | | | | | | | | 20 |
| 2-bedroom 750 square-foot rental | | 25 | 34 | 22 | | | | | | 81 |
| 3-bedroom 1,000 square-foot rental | | | | | 15 | 9 | | | | 24 |
| 2-bedroom 1,200 square-foot for sale | | | | | | 10 | 14 | | | 24 |
| 3-bedroom 1,350 square-foot for sale | | | | | | | | 10 | | 10 |
| 3-bedroom 1,400 square-foot for sale | | | | | | | | | 14 | 14 |
| | | | | | | | | | | |
| Total Units | 20 | 25 | 34 | 22 | 15 | 19 | 14 | 10 | 14 | 173 |

WE HEREBY CERTIFY that the foregoing BILL NO. 3 (2006), DRAFT 1


1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 17th day of February, 2006, by the following vote:

| | | | | | | | | |
|-------------------------|------------------------------|-------------------|-----------------|--------------|-----------------|-------------------|-------------------|-------------------|
| G. Riki HOKAMA Chair | Robert CARROLL Vice-Chair | Michelle ANDERSON | Jo Anne JOHNSON | Dain P. KANE | Dennis A. MATEO | Michael J. MOLINA | Joseph PONTANILLA | Charmaine TAVARES |
| Aye | Aye | No | No | Aye | No | Aye | Aye | Aye |

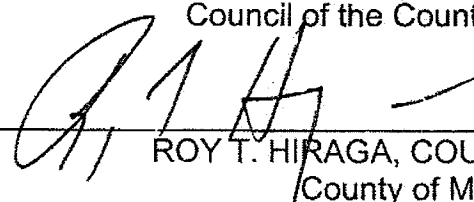
2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 21st day of February, 2006.

DATED AT WAILUKU, MAUI, HAWAII, this 21st day of February, 2006.

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OFFICE OF THE MAYOR

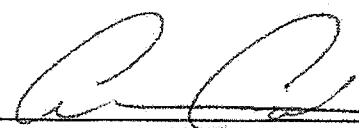


 G. RIKI HOKAMA, CHAIR
 Council of the County of Maui



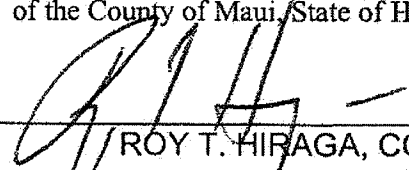
 ROY T. HIRAGA, COUNTY CLERK
 County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 21 DAY OF February, 2006.



 ALAN M. ARAKAWA, MAYOR
 County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3358 of the County of Maui, State of Hawaii.



 ROY T. HIRAGA, COUNTY CLERK
 County of Maui

Passed First Reading on January 6, 2006.
Effective date of Ordinance February 21, 2006.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3358, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

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OFFICE OF THE COUNTY CLERK