

ORDINANCE NO. _____

BILL NO. _____ (2019)

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 IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapters 19.38 and 19.510, Maui County Code, zoning designations are ~~hereby~~ amended (Conditional Zoning) for certain parcels of land situated at Wailuku, Maui, Hawaii, from Wailuku-Kahului Project District 5 (Maui Tropical Plantation) and Agricultural District to Waikapu Country Town (WCT) District, as identified in Table 1, comprising ~~approximately~~ 495.905 acres, and more particularly described in Exhibit "A",² which is attached hereto and made a part hereof, and in Land Zoning ~~Map Nos. Maps~~ L-2705, L-2706, L-2707, L-2708, and L-2709, which are ~~on file in the Office of the County Clerk of the County of Maui, and by reference~~ attached hereto as Exhibit "B" and made a part hereof.

RECEIVED AT PSLU MEETING ON 6/26/19
(Committee Chair)

Table 1

CHANGE IN ZONING			
TMK	FROM	TO	ACRES
(2) 3-6-004: POR por. of 003,	AG	Waikapu	87.832
(2) 3-6-004: POR . ofpor. OF	AG	Country Town	48.807
003,	AG	(WCT)	53.630
(2) 3-6-004:006,	AG		0.721
(2) 3-6-006:036,	AG		2.089
(2) 3-6-004: POR . ofpor. OF	PD-WK/5		59.054
003,	AG		243.772
(2) 3-6-005:007,			
(2) 3-6-002: POR por. of 003			
Total			495.905

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,”C,” 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 “E.”D.”

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
- AND LEGALITY:

MICHAEL J. HOPPER
Deputy _____

Department of the Corporation Counsel
LF 2018-1445
2019-02-12 Ordinance Change in Zoning
County of Maui

pslu:misc:030abill03b:jgk

EXHIBIT "B" C"

CONDITIONS OF ZONING

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

1. Transportation – State Department of Transportation, Highways Division (SDOT-H).
 - a. ApplicantLandowners shall mitigate all Project generated traffic impacts as required by the SDOT-H. ApplicantLandowners shall enter into an agreement ~~to mitigate regarding the traffic related impacts scope~~ and ~~the timing to complete 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. ApplicantLandowners shall ~~reduce the number of construct~~ project intersections with Honoapiilani Highway ~~from three (3) to two (2) — one (1) only~~ at the Main Street Intersection (also referred to as Study Intersection #9 in the TIAR/EIS),] and ~~one (1)~~ at the Waiale Road Extension Intersection (also referred to as Study Intersection #13 in the TIAR/EIS.) ApplicantLandowners are solely responsible for funding and constructing the Main Street and Waiale Road Extension intersection improvements.
 - c. ApplicantLandowners shall conduct an analysis of the suitability of a roundabout at the ~~proposed required~~ Honoapiilani Highway and Main Street Intersection. The Applicant's Landowners' shall transmit its analysis with findings ~~shall be transmitted~~ 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 ~~will~~ must be ~~pursued~~ constructed by ~~the ApplicantLandowners~~.
 - d. ApplicantLandowners 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 ~~at these intersections~~.
- ComplianceSDOT-H will confirm compliance with this/this condition shall be confirmed by SDOT H.

2. Transportation – State Department of Transportation, Airports Division (SDOT-A). ~~Applicant~~Landowners shall work with SDOT-A to ~~address~~confirm compliance with the Federal Aviation Administration or other relevant government agency’s guidelines and regulations ~~that may hinder~~regarding aircraft passage ~~and/or~~ airport operations at the Kahului Airport ~~(OGG)~~.

3. Transportation – DPW.
 - a. ~~Applicant~~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 ~~to the County of Maui~~ 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. ~~Applicant~~Landowners shall enter into an agreement with ~~the~~ DPW regarding the project’s ~~fair~~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 ~~may be~~are made. The agreement ~~may~~will also consider the project’s actual traffic generated insofar as any reductions (or increases) in traffic than originally estimated may reduce (or increase) the pro rata share in the future. Further, ~~the~~ ~~Applicant~~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.

~~Compliance with this condition shall be confirmed by DPW.~~

4. ~~Storm Water~~4. Stormwater Management and Drainage. ~~Applicant,~~ Landowners shall maintain existing drainage patterns ~~as 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 ~~as reviewed and~~ approved by the DPW shall ~~be such that there will be no~~not increase in runoff from the ~~project site~~Project Area as a result of an increase in impervious surfaces.

~~Compliance~~The DPW shall confirm compliance with this condition ~~shall be confirmed by the DPW.~~

5. Residential Workforce Housing. ~~Applicant~~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 MCC 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.
6. Wastewater. ~~Applicant~~Landowners shall participate in the funding and/or construction of adequate private or public wastewater facilities ~~to accommodate for the proposed uses for each portion of Waikapu Country Town 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 ~~the Applicant's~~Landowners' proposed wastewater facilities are to be located within the State ~~and County~~ agricultural districts, ~~Applicant~~Landowners shall apply for a State Special Permit in accordance with the provisions of HRS Chapter 205-, Hawaii Revised Statutes (HRS). If ~~the Applicant desires~~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. ~~Applicant~~Landowners shall participate in an air quality monitoring program as required by the DOH.
8. Education Contribution Agreement. ~~Applicant~~Landowners shall contribute to the development, funding, and/or 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 ~~the~~ ApplicantLandowners and the Department of Education. ~~Applicant~~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. ~~Applicant~~Landowners shall implement, ~~to the extent feasible and practicable,~~ 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 ~~the rules of HRS~~ Section 196-6.5. ~~Applicant, 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. ~~Applicant~~Landowners shall implement water conservation measures and BMPs such as the use of indigenous plants ~~to the extent practicable~~ 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. ApplicantLandowners shall participate in the funding and/or construction of adequate private or public water source, storage, and transmission facilities to accommodate the proposed uses for each ~~phase of subdivision in~~ the Project Area in accordance with the applicable standards and requirements of the DOH and/or the County of Maui, with plans submitted for approval by the appropriate agency. ApplicantLandowners shall coordinate with the Commission on Water Resources Management regarding the overall impact of water pumpage on the Waikapu aquifer. Further, ~~the ApplicantLandowners~~ 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. Landowners shall supply water for agricultural use upon demand, up to at least 3.42 million gallons per day of water for agricultural uses on the agricultural zoned lands subject the agricultural easement and the mauka 277 acres at full agricultural use.
12. Street Lights. ApplicantLandowners shall use fully-shielded street lights within the ~~Waikapu Country Town area~~Project Area to avoid impacts to avifauna and other wildlife populations and to prevent light diffusion ~~upward~~ into the night sky.
13. Sirens. ApplicantLandowners 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. ApplicantLandowners shall comply with the park dedication requirements of the County of Maui. ApplicantLandowners 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 ~~MCC. Particular attention~~Maui County Code. Landowners shall be exercised in developingdevelop parks and recreational areas that may be used by all ages and ~~that these recreational areas~~ 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, ApplicantLandowners 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. ApplicantLandowners shall submit to the Department an executed copy of the conservation easement or relevant instrument for ~~at least 800~~ 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 or farm worker housing, on the agricultural lands that are subject to the agricultural easement or conservation easement, and such easement shall include this restriction. Open land recreation, except farm tours; animal hospitals and animal board facilities; riding academies; parks for public use; family child care homes; and other uses not defined in Section 19.30A.050, Maui County Code, are not allowed in the area subject to the conservation easement. Landowners shall not seek special use permits for open land recreation activities in the area subject to the conservation easement. No commercial agricultural structures except farmer's markets and agricultural product stands are allowed 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 DistrictDivision (DLNR-SHPD) ~~shall be notified and~~ shall make a determination on whether an archaeological inventory survey shall be provided by ~~the Applicant~~Landowners for such area. ~~The Applicant~~Landowners shall notify the Department of any proposed development within the conservation easement lands and any determination made by DLNR-SHPD.

17. Notification of Agricultural Use. ApplicantLandowners, and all subsequent owners, shall ~~notify and~~ disclose to developers, purchasers, and ~~or~~ lessees of the provisions of Chapter 165, Hawaii Revised Statutes ~~(HRS) Chapter 165~~, 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 ~~or~~ 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 HRS Section 165-2, Hawaii Revised Statutes.
18. Archaeological ~~and~~ Historic Sites. ApplicantLandowners 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 ~~the Applicant's~~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 ~~the~~

ApplicantLandowners; and d) ApplicantLandowners 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). 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. ApplicantLandowners shall comply with all interim and permanent mitigation and preservation measures required by DLNR-SHPD. ApplicantLandowners shall provide verification to the ~~Planning~~ Department that DLNR-SHPD has determined that all required historic preservation measures have been implemented. ~~The ApplicantLandowners~~ shall notify DLNR-SHPD prior to the first ground disturbance activity.

19. Cultural. ApplicantLandowners shall consult with those persons known as Waikapu Stream South Kuleana ~~Lo'i~~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, ApplicantLandowners 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 ~~or 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). ~~Such~~ The easements shall be recorded and run with the land.
20. Endangered Species. ApplicantLandowners shall implement the following procedures to avoid potential impacts to endangered species: a) ApplicantLandowners 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) ApplicantLandowners 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~~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. ApplicantLandowners 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. ApplicantLandowners 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 ~~storm water~~/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.

23. Compliance with Representations to the Maui County Council. ApplicantLandowners 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. ApplicantLandowners shall provide the Department, ~~without any written prior notice~~, an annual report on the status of the development of the Project Area and Applicant'sLandowners' 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. In the 277 acres designated as part of the Project Area agricultural plan, which consists of the portion of TMK (2)3-6-004:003 for which the zoning remains agriculture, no animal sales yards are allowed. The only agricultural accessory uses allowed are: farm dwellings; small scale energy systems, small-scale animal-keeping; and parks for public use Landowners shall not seek county special use permits, state special permits or approvals under Chapter 201H Hawaii Revised Statute. If subdivided, it shall consist of a total of no more than five lots. There shall be no more than two farm dwellings on each lot, and shall be no farm labor dwellings.
26. Landowners shall establish the Waikapū Cultural Preserve, Cultural Corridor and Riparian Buffer, as described in the Integrated Natural-Cultural Resource Preservation & Management Plan, prior to the first final subdivision approval.
27. Landowners shall implement all priority projects described in the Integrated Natural-Cultural Resource Preservation & Management Plan, prior to the first final subdivision approval.
28. Landowners shall submit all street names in the Project Area for review and approval to the Public Works Commission.