

REQUEST FOR LEGAL SERVICES

Date: October 12, 2022
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee


TRANSMITTAL

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

Subject: RESOLUTION 22-213, RELATING TO AMENDING ORDINANCE 2924 (CONDITIONAL ZONING) FOR EMERGENCY AIRSTRIP OPERATIONS AT KAPALUA AIRPORT (PSLU-62)

Background Data: Please review the attached resolution and exhibits and submit your response to pslu.committee@mauicounty.us.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY
☐ [X] OTHER: Please note the difference in TMK numbers as follows: "4-3-001: portion of 031" in Exhibit 1 and "4-1-001:031 (unsubdivided)" in Exhibit B(1). Please reconcile the references.

Requestor's signature  Tamara Paltin	Contact Person <u>Wilton Leauanae or Paige Greco</u> (Telephone Extension: <u>7661 or 7660, respectively</u>)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS) ☐ [] RUSH (WITHIN 5 WORKING DAYS)
☐ [] PRIORITY (WITHIN 10 WORKING DAYS) ☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): October 26, 2022
REASON: For posting on the November 4, 2022, Council Agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: ☐ [] APPROVED ☐ [] DISAPPROVED ☐ [] OTHER (SEE COMMENTS BELOW)
☐ [] RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

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

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

pslu:ltr:062acc01:pmg

Attachment

Resolution

No. 22-213, CD1

REFERRING TO THE MAUI PLANNING COMMISSION
A PROPOSED BILL TO AMEND ORDINANCE 2924
(CONDITIONAL ZONING) FOR EMERGENCY AIRSTRIP
OPERATIONS AT KAPALUA AIRPORT

WHEREAS, the Council is considering a proposed bill for an ordinance to amend Ordinance 2924 (conditional zoning) for emergency airstrip operations at Kapalua Airport; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, requires the appropriate planning commissions to review proposed land use ordinances and amendments and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill entitled “A BILL FOR AN ORDINANCE TO AMEND ORDINANCE 2924 (CONDITIONAL ZONING) FOR EMERGENCY AIRSTRIP OPERATIONS AT KAPALUA AIRPORT,” a copy of which is attached as Exhibit “1,” to the Maui Planning Commission for appropriate action under Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended; and
2. That it respectfully requests the Maui Planning Commission transmit its findings and recommendations to the Council as expeditiously as possible; and
3. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, and the Maui Planning Commission.

INTRODUCED BY:

TAMARA PALTIN

EXHIBIT “1”

ORDINANCE NO. _____

BILL NO. _____ (2022)

A BILL FOR AN ORDINANCE TO AMEND ORDINANCE 2924
(CONDITIONAL ZONING) FOR EMERGENCY AIRSTRIP
OPERATIONS AT KAPALUA AIRPORT

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

SECTION 1. This Ordinance’s purpose is to allow emergency airstrip operations at Kapalua Airport by amending the property’s Conditional Zoning under Section 19.510.050, Maui County Code.

SECTION 2. Ordinance 2924 (Conditional Zoning) is amended for that certain parcel of land located at Kahana and Mahinahina, Lahaina, Maui, Hawaii, identified for Real Property Tax purposes as Tax Map Keys 4-3-001:068, :073, :074, and :075 (formerly Tax Map Key 4-3-001: portion of 031), composed of approximately 50 acres, and more particularly described in Exhibit “A,” Ordinance 1535.

SECTION 3. SECTION 2 of Ordinance 2924 is amended, with new material underscored and material to be repealed bracketed, by amending Condition 4 to read as follows:

- “4. That the airstrip operations [shall be] are limited to one half hour after sunrise to 6:30 p.m., unless extended for emergency airstrip operations. “Emergency airstrip operations” are defined as any occasion or instance that warrants action to save lives and protects property and public health.”

SECTION 4. SECTION 2 of Ordinance 2924 is amended by adding a new condition, Condition 17, to read as follows:

“17. That installation and use of runway lights at Kapalua Airport are permitted for emergency airstrip operations only.”

SECTION 5. All other conditions in SECTION 2 of Ordinance 2924 remain in effect.

SECTION 6. The amendment to Condition 4 and the addition of Condition 17 to Ordinance 2924 are subject to the “SECOND AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL USE,” attached as Exhibit “B.”

SECTION 7. This Ordinance takes effect on approval.

pslu:misc:062abill01:pmg

INTRODUCED BY:

TAMARA PALTIN

EXHIBIT "B"

LAND COURT

REGULAR SYSTEM

Return by Mail to:

OFFICE OF THE COUNTY CLERK
County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT:

SECOND AMENDMENT TO UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL USE

TOTAL NUMBER OF PAGES ____

Affects Tax Map Keys (Maui) 4-3-1:068, :073, :074, and :075

**SECOND AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION
FOR CONDITIONAL USE**

THIS AGREEMENT, made on _____, 20__, by STATE OF HAWAII, through its DIRECTOR OF TRANSPORTATION, whose place of business is at 869 Punchbowl Street, Honolulu, Hawaii 96813, referred to as "Declarant," and who is the owner of that certain parcel located at Mahinahina, Maui, Hawaii, and identified for real property tax purposes by Tax Map Keys 4-3-1:068, :073, :074, and :075; and formerly known as Tax Map Key 4-1-001:031 (unsubdivided).

W I T N E S S E T H:

WHEREAS, in and under that certain recorded Amendment to Unilateral Agreement and Declaration for Conditional Use, dated October 18, 2000, and recorded in the Bureau of Conveyances of the State of Hawaii as Document 2000-168906, DECLARANT agreed to 16 zoning conditions; and

WHEREAS, DECLARANT now agrees to amend the fourth zoning condition to read as follows:

"4. That the airstrip operations are limited to one half hour after sunrise to 6:30 p.m., unless extended for emergency airstrip operations. "Emergency airstrip operations" are defined as any occasion or instance that warrants action to save lives and protects property and public health."; and

WHEREAS, DECLARANT now agrees to a seventeenth zoning condition, to read as follows:

"17. That installation and use of runway lights at the Kapalua Airport for emergency airstrip operations only are permitted."; and

WHEREAS, DECLARANT agrees that all other zoning conditions established by Ordinances 1535 and 2924 remain in effect; and

WHEREAS, DECLARANT amends the Amendment to Unilateral Agreement and Declaration for Conditional Use, dated October 18, 2000, and recorded in the Bureau of Conveyances of the State of Hawaii as Document 2000-168906, to agree to the seventeen zoning conditions listed in Exhibit "1"; and

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

DECLARANT:

STATE OF HAWAII

DEPARTMENT OF TRANSPORTATION

By _____

Its _____

APPROVED AS TO FORM AND
LEGALITY:

Deputy Attorney General
State of Hawaii

APPROVED AS TO FORM AND
LEGALITY:

Department of the Corporation Counsel
County of Maui

pslu:misc:062abill02:pmg

STATE OF _____)
)
) SS.
_____)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

[Stamp or Seal]

Notary Signature: _____

Date: _____

STATE OF _____)
)
) SS.
_____)

On this ____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

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

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

NOTARY PUBLIC CERTIFICATION

Doc. Date: _____ # Pages: _____

Notary Name: _____ Judicial Circuit: _____

Document Description: _____

[Stamp or Seal]

Notary Signature: _____

Date: _____

EXHIBIT “1”

1. That the Council’s approval is based on revised plans, as amended December 1985, and identified as Amended Exhibits 1 through 5, and upon all other documentation submitted with the subject application (including, but not limited to the “Petition for District Boundary Amendment for Hawaiian Airlines, Inc.”). No material or substantive changes shall be made without the approval of the Maui County Council.
2. That the runway, runway apron and other facilities shall not be expanded, nor shall any portion of the runway safety area be paved or utilized for displaced landing or takeoff thresholds.
3. That the concession area shall be limited to the 5040 square feet designated in the revised plans and shall not contain more than one cocktail lounge, one snack bar, one restaurant and one newsstand.
4. That the airstrip operations are limited to one half hour after sunrise to 6:30 p.m., unless extended for emergency airstrip operations. “Emergency airstrip operations” are defined as any occasion or instance that warrants action to save lives and protects property and public health.
5. That there shall not be more than three car rental booths.
6. That onsite parking or storage of rental cars shall not be allowed.
7. That the Mayor of the County of Maui or his designated representative shall be designated a member of any Users’ Committee which may be established to oversee flight scheduling, operations, and management of the facility.
8. That the applicant shall submit and enforce a comprehensive sign program subject to review and approval by the Planning Department. In addition, the applicant shall provide street and highway directional signs as may be required by the State or County.
9. That a final landscape planting plan shall be submitted to the Planning Department for review and approval.
10. That the applicant shall comply with all requirements of the State Department of Transportation, Highways Division.

11. That construction of the project shall be initiated within one year of the final approval of said Change in Zoning.
12. That appropriate measures shall be taken during construction to mitigate the short term impacts of the projects relative to soil erosion from wind and rain, and increased ambient noise levels.
13. That the applicant, its successors and assigns, shall protect, defend, indemnify and hold harmless the County of Maui from and against any loss, liability, claim, or demand arising out of this ordinance.
14. That full compliance with all federal, state and county requirements shall be rendered.
15. That all aircraft operated at the airstrip, including without limitation applicant's aircraft, and aircraft of licensees of applicant, shall have a current "Aircraft Type" or "Airworthiness" certificate or its equivalent issued by the Federal Aviation Administration ("FAA") certifying that such aircraft generates noise levels no greater than the following:

(1) For propeller-driven aircraft of 12,500 pounds or less maximum FAA certificated takeoff weight only: The maximum allowable noise levels for "propeller-driven small airplanes" under Appendix F to Part 36, "Noise Standards: Aircraft Type Airworthiness Certifications," Title 14, Code of Federal Regulations (January 1, 1978), as the same may be amended from time to time, with noise levels measured and corrected as provided in such appendix, but in no event in excess of a noise level of 80dB(A) measured pursuant to said Appendix F; and

(2) For all other aircraft: The "Effective Perceived Noise Levels," as that term is defined in said Part 36, under conditions of "Takeoff," "sideline," and "approach," as those terms are defined in said Part 36, in units of "EPNdB," as that term is defined in said Part 36, measured as provided in said Part 36, as follows:

- (a) for takeoff: 80.5 EPNdB;
- (b) for sideline: 84 EPNdB; and
- (c) for approach: 91.6 EPNdB.

16. That if, and only to the extent such changes to the intersection of Lower Honoapiilani Road and Akahele Street are required to be made as a result of applicant's airstrip operations, applicant will participate with the County of Maui in (a) the signalization of the intersection and (b) the design and planning of any required street widening of Akahele Street within 100 feet of the intersection.
17. That installation and use of runway lights at Kapalua Airport are permitted for emergency airstrip operations only.