

REQUEST FOR LEGAL SERVICES

RECEIVED

By Corporation Counsel at 11:37 am, Aug 01, 2023

Date: July 31, 2023
From: Tasha Kama, Chair
Housing and Land Use Committee

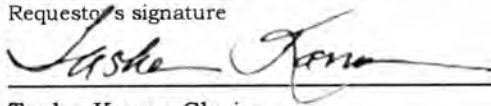
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Mimi Desjardins Esq.

Subject: BILL 28 (2023), AMENDING ORDINANCE 4998 (2019) RELATING TO CHANGE IN ZONING (CONDITIONAL ZONING) TO WAIKAPU COUNTRY TOWN (WCT) DISTRICT FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII (HLU-8)

Background Data: Please see the attached bill and Unilateral Agreement.

Work Requested: ☐ FOR APPROVAL AS TO FORM AND LEGALITY
☒ OTHER: 1) Please work with the landowner's representative, Mr. Jeffrey Ueoka, Esq., Mancini, Welch & Geiger LLP, to execute three originals of the Unilateral Agreement (Exhibit "1" to the bill. 2) Please approve Bill 28, CD1 (2023) as to form and legality and return to the HLU Committee.

Requestor's signature  Tasha Kama, Chair	Contact Person Ana Lillis or Paige Greco (Telephone Extension: <u>7669 and 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)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): August 14, 2023
REASON: For posting on August 22, 2023, Council meeting agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: MJH	ASSIGNMENT NO. 2023-0141	BY: GMR for MAA
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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): _____

Date 8/14/23 DEPARTMENT OF THE CORPORATION COUNSEL
By MJH

(Rev. 7/03)

hlu:ltr:008acc01:alkl

Attachment

ORDINANCE NO. _____

BILL NO. 28, CD1 (2023)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE 4998 (2019) RELATING TO THE CHANGE IN ZONING (CONDITIONAL ZONING) TO WAIKAPU COUNTRY TOWN (WCT) DISTRICT FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII

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

SECTION 1. Condition 1.a of Exhibit “C” (Conditions of Zoning) of Ordinance 4998 (2019) is amended to read as follows, with new material underscored:

“Landowners shall mitigate all Project-generated traffic impacts as required by the SDOT-H. Landowners shall enter into an agreement regarding the scope and timing of required traffic improvements to mitigate the traffic related impacts of the project on SDOT-H facilities as generally indicated in the project’s Pro Rata Share Calculations for Waikapu Country Town Project dated June 29, 2018, as approved by SDOT-H. Alternatively, Landowners may, subject to agreement with SDOT-H, provide additional residential workforce housing units in the project in lieu of providing funding or constructing traffic improvements to mitigate the traffic-related impacts of the project. The agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the project.”

SECTION 2. Condition 1.b of Exhibit “C” (Conditions of Zoning) of Ordinance 4998 (2019) is amended to read as follows, with deleted material in brackets and new material underscored:

“Landowners shall fully fund the project [intersections] intersection with Honoapiilani Highway only at the Main Street Intersection (also referred to as Study Intersection #9 in the TIAR/EIS) [and at the Waiale Road Extension Intersection (also referred to as Study Intersection #13 in the TIAR/EIS.)]. Landowners are solely responsible for funding the Main Street [and

Waiale Road Extension] intersection improvements. Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, provide additional residential workforce housing units in the project in lieu of providing funding or constructing the intersection with Honoapiilani Highway at the Waiale Road Extension intersection (also referred to as Study Intersection #13 in the TIAR/EIS).”

SECTION 3. Condition 1.d of Exhibit “C” (Conditions of Zoning) of Ordinance 4998 (2019) is amended to read as follows, with deleted material in brackets and new material underscored:

“Landowners shall provide pedestrian crossings on Honoapiilani Highway at the [intersections] intersection of Main Street [and Waiale Road Extension,] and ensure that the development layout provides pedestrian routes to [these] this pedestrian [crossings.] crossing. Landowners are not constructing the Waiale Road Extension or the Waiale Road Extension intersection with Honoapiilani Highway. Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, provide additional residential workforce housing units in the project in consideration of the County providing pedestrian crossings on Honoapiilani Highway at the intersection of the Waiale Road Extension.”

SECTION 4. Condition 3.b of Exhibit “C” (Conditions of Zoning) of Ordinance 4998 (2019) is amended to read as follows, with deleted material in brackets and new material underscored:

“Landowners shall enter into an agreement with DPW regarding the project’s pro rata share contribution to the Waiale Road Extension from Waiko Road to Honoapiilani Highway. The agreement shall determine the project’s pro rata share of the total anticipated costs for design and construction of the future Waiale Road Extension and the methods and timing by which the payments or similar contributions are made. Alternatively, Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, provide additional residential workforce housing units in lieu of contributing funding for the design and construction of the future Waiale Road Extension. [The agreement will also consider the project’s actual traffic generated insomuch as any reductions or increases in traffic than

originally estimated may reduce or increase the pro rata share in the future.] Further, Landowners shall deed the Waiale Road Extension right-of-way to DPW, upon demand, the value of which shall not be considered towards the pro rata share used in the agreement. The agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the project. DPW shall confirm compliance with this condition.”

SECTION 5. Condition 5 of Exhibit “C” (Conditions of Zoning) of Ordinance 4998 (2019) is amended to read as follows, with deleted material in brackets and new material underscored:

“Residential Workforce Housing. Landowners shall provide residential workforce housing opportunities in accordance with the County of Maui’s residential workforce housing requirements. The required number of residential workforce housing units as determined by the County of Maui shall be completed [according to a timetable associated with the issuance of building permits for market-rate dwelling units] as required by [the] Chapter 2.96.060, Maui County Code, and as agreed to by the Department of Housing and Human Concerns. All residential workforce housing units in the project are subject to the following deed restriction periods:

- a. “Below-moderate income,” ten years.
- b. “Moderate income,” eight years.
- c. “Above-moderate income,” five years.

Landowners will not seek project approvals authorized by Chapter 201H, Hawaii Revised [Statues,] Statutes, or similar project approvals for this project.”

SECTION 6. Condition 6 of Exhibit “C” (Conditions of Zoning) of Ordinance 4998 (2019) is amended to read as follows, with deleted material in brackets and new material underscored:

“Wastewater. Landowners shall participate in the funding and construction of adequate private or public wastewater facilities for the Project Area. The wastewater facilities shall be in accordance with the applicable standards and requirements of the DOH and the County of Maui as applicable. If Landowners’ proposed wastewater facilities are to be located within the State agricultural [districts,] district, Landowners shall apply for a State Special Permit in accordance with the provisions of Chapter 205, Hawaii Revised Statutes [(HRS)]. Alternatively, Landowners may, subject to the

Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, provide additional residential workforce housing units in the project in lieu of participating in the funding and construction of adequate private or public wastewater facilities. Subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, an interim connection to the Wailuku/Kahului Wastewater Treatment Facility for 100,000 gallons per day of wastewater may be made available for the project, provided that upon the County’s new wastewater treatment facility in the vicinity of the project coming online, the project’s wastewater may be diverted to the County’s new wastewater treatment facility. If Landowners desire to request an initial or interim connection to County wastewater facilities for any dwellings, an agreement must be made to the satisfaction of the Department of Environmental Management and other applicable agencies prior to the issuance of any building permit. County or private operable wastewater facilities must be available to serve any use or structure prior to the issuance of the building permit for such use or structure.”

SECTION 7. Condition 8 of Exhibit “C” (Conditions of Zoning) of Ordinance

4998 (2019) is amended to read as follows, with new material underscored:

“Education Contribution Agreement. Landowners shall contribute to the development, funding, and construction of school facilities in compliance with the Educational Contribution Agreement for Waikapu Country Town, undated but executed as of January 31, 2017, entered into by Landowners and the Department of Education, as may be amended. 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, as may be amended. Such notice shall be recorded and run with the land.”

SECTION 8. Under Section 19.510.050, Maui County Code, the zoning granted by this Ordinance is subject to:

- the conditions in Ordinance 4998’s Exhibit “C,” as amended by this Ordinance’s Sections 1-7; and

- this Ordinance's Exhibit "1," the First Amendment to the Unilateral Agreement and Declaration for Conditional Zoning.

SECTION 9. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke, positioned above a solid horizontal line.

Department of the Corporation Counsel
County of Maui

hlu:misc:008abill01:alkl

EXHBIIT "1"

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:

FIRST AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION FOR
CONDITIONAL ZONING

Tax Map Key No.: (2) 3-6-004:003 (portions);
(2) 3-6-004:006;
(2) 3-6-006:036;
(2) 3-6-005:007; and
(2) 3-6-002:003 (portion)

TOTAL NUMBER OF PAGES 27

**FIRST AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION
FOR CONDITIONAL ZONING**

THIS FIRST AMENDMENT TO UNILATERAL AGREEMENT "the First Amendment", made on August 11, 2023, by Waikapu Properties, LLC, a Hawaii limited liability company; MTP Land Partners, LLC, a Hawaii limited liability company; the William Filios Separate Property Trust dated April 3, 2000; and Waiale 905 Partners, LLC, a Hawaii limited liability company, all of which have a mailing address of P.O. Box 1870, Manteca, California 95336, jointly referred to as "the DECLARANT," and which cumulatively are the title owners of those parcels located at Waikapu, Maui, Hawaii, comprising 495.905 acres and identified for real property tax purposes by tax map keys (2) 3-6-004:003 (portions), (2) 3-6-004:006, (2) 3-6-006:036, (2) 3-6-005:007, and (2) 3-6-002:003 (portion).

WITNESSETH:

WHEREAS, under that certain recorded Unilateral Agreement and Declaration for Conditional Zoning dated August 30, 2019, and recorded in the Bureau of Conveyances of the State of Hawaii as Document No. A-71880097 "the Declaration", the DECLARANT agreed to twenty-seven zoning conditions; and

WHEREAS the Council recommends through its Housing and Land Use Committee Report _____ that Bill 28, CD1 (2023), proposing to establish amended conditional zoning be approved for passage on first reading under Section 19.510.050, Maui County Code, "Conditional zoning"; and

WHEREAS, the DECLARANT has agreed to execute this instrument under Section 19.510.050, Maui County Code, "Conditional zoning"; and

WHEREAS, the DECLARANT now agrees to amended zoning condition 1.a to read as follows, with new material underscored:

"Landowners shall mitigate all Project-generated traffic impacts as required by the SDOT-H. Landowners shall enter into an agreement regarding the scope and timing of required traffic improvements to mitigate the traffic related impacts of the project on SDOT-H facilities as generally indicated in the project's Pro Rata Share Calculations for Waikapu Country Town Project dated June 29, 2018, as approved by SDOT-H. Alternatively, Landowners may, subject to agreement with SDOT-H, provide additional residential workforce housing units in the project in lieu of providing funding or constructing traffic improvements to mitigate the traffic related impacts of the project. The agreement

shall be executed prior to the approval of the first subdivision application to the County of Maui for the project.”; and

WHEREAS, the DECLARANT now agrees to amended zoning condition 1.b to read as follows, with deleted material in brackets and new material underscored:

“Landowners shall fully fund the project [intersections] intersection with Honoapiilani Highway only at the Main Street Intersection (also referred to as Study Intersection #9 in the TIAR/EIS). [and at the Waiale Road Extension Intersection (also referred to as Study Intersection #13 in the TIAR/EIS.)] Landowners are solely responsible for funding the Main Street [and Waiale Road Extension] intersection improvements. Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, provide additional residential workforce housing units in the project in lieu of providing funding or constructing the intersection with Honoapiilani Highway at the Waiale Road Extension intersection (also referred to as Study Intersection #13 in the TIAR/EIS).”; and

WHEREAS, the DECLARANT now agrees to amended zoning condition 1.d to read as follows, with deleted material in brackets and new material underscored:

“Landowners shall provide pedestrian crossings on Honoapiilani Highway at the [intersections] intersection of Main Street [and Waiale Road Extension,] and ensure that the development layout provides pedestrian routes to [these] this pedestrian [crossings.] crossing. Landowners are not constructing the Waiale Road Extension or the Waiale Road Extension intersection with Honoapiilani Highway. Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, provide additional residential workforce housing units in the project in consideration of the County providing pedestrian crossings on Honoapiilani Highway at the intersection of the Waiale Road Extension.”; and

WHEREAS, the DECLARANT now agrees to amended zoning condition 3.b to read as follows, with deleted material in brackets and new material underscored:

“Landowners shall enter into an agreement with DPW regarding the project’s pro rata share contribution to the Waiale

Road Extension from Waiko Road to Honoapiilani Highway. The agreement shall determine the project's pro rata share of the total anticipated costs for design and construction of the future Waiale Road Extension and the methods and timing by which the payments or similar contributions are made. Alternatively, Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, provide additional residential workforce housing units in lieu of contributing funding for the design and construction of the future Waiale Road Extension. [The agreement will also consider the project's actual traffic generated inasmuch as any reductions or increases in traffic than originally estimated may reduce or increase the pro rata share in the future.] Further, Landowners shall deed the Waiale Road Extension right-of-way to DPW, upon demand, the value of which shall not be considered towards the pro rata share used in the agreement. The agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the project. DPW shall confirm compliance with this condition.”; and

WHEREAS, the DECLARANT now agrees to amended zoning condition 5 to read as follows, with deleted material in brackets and new material underscored:

“Residential Workforce Housing. Landowners shall provide residential workforce housing opportunities in accordance with the County of Maui’s residential workforce housing requirements. The required number of residential workforce housing units as determined by the County of Maui shall be completed [according to a timetable associated with the issuance of building permits for market-rate dwelling units] as required by [the] Chapter 2.96.060, Maui County Code, and as agreed to by the Department of Housing and Human Concerns. Further provided, all residential workforce housing units in the project are subject to the following deed restriction periods:

- a. “Below-moderate income,” ten years.
- b. “Moderate income,” eight years.
- c. “Above-moderate income,” five years.

Landowners will not seek project approvals authorized by Chapter 201H, Hawaii Revised [Statues,] Statutes, or similar project approvals for this project.”; and

WHEREAS, DECLARANT now agrees to amended zoning condition 6 to read as follows, with deleted material in brackets and new material underscored:

“Wastewater. Landowners shall participate in the funding and construction of adequate private or public wastewater facilities for the Project Area. The wastewater facilities shall be in accordance with the applicable standards and requirements of the DOH and the County of Maui as applicable. If Landowners’ proposed wastewater facilities are to be located within the State agricultural [districts,] district, Landowners shall apply for a State Special Permit in accordance with the provisions of Chapter 205, Hawaii Revised Statutes [(HRS)]. Alternatively, Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, provide additional residential workforce housing units in the project in lieu of participating in the funding and construction of adequate private or public wastewater facilities. Subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, an interim connection to the Wailuku/Kahului Wastewater Treatment Facility for 100,000 gallons per day of wastewater may be made available for the project, provided that upon the County’s new wastewater treatment facility in the vicinity of the project coming online, the project’s wastewater may be diverted to the County’s new wastewater treatment facility. If Landowners desire to request an initial or interim connection to County wastewater facilities for any dwellings, an agreement must be made to the satisfaction of the Department of Environmental Management and other applicable agencies prior to the issuance of any building permit. County or private operable wastewater facilities must be available to serve any use or structure prior to the issuance of the building permit for such use or structure.”; and

WHEREAS, the DECLARANT now agrees to amended zoning condition 8 to read as follows with new material underscored:

“8. Education Contribution Agreement. Landowners shall contribute to the development, funding, and construction of school facilities in compliance with the Educational Contribution Agreement for Waikapu Country Town, undated but executed as of January 31, 2017, entered into by Landowners and the Department of Education, as may be amended. 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, as may be amended. Such notice shall be recorded and run with the land.”; and

WHEREAS, the DECLARANT amends the Declaration, to recognize the amended conditions of zoning set forth in Bill 28, CD1 (2023); and

WHEREAS, the DECLARANT agrees that all other conditions of zoning established by Ordinance 4998 (2019) remain in effect; and

NOW THEREFORE the DECLARANT makes the following Declaration:

1. That this First Amendment is made pursuant to the provisions of Section 19.510.050, Maui County Code, "Conditional zoning";

2. That the conditions of zoning imposed are reasonable and rationally relate to the objective of preserving the public health, safety, and general welfare, and the conditions fulfill the need for the public service demands created by the proposed use;

3. That the Declaration, as amended, and all of the covenants, conditions, and, restrictions 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 the 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 to the Declarant means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, includes any corporation, and includes the Declarant, the Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That this First Amendment will become fully effective on the effective date of Bill 28, CD1 (2023), the zoning ordinance amending the conditional zoning, and this First Amendment must be recorded in the Bureau of Conveyances or filed in the Land Court of the State of Hawaii, as may be appropriate;

6. That Exhibit "3", "Conditions of Zoning", attached to the Declaration is hereby removed and replaced with Exhibit "3-A", "Conditions of Zoning" attached hereto. Any references to the Exhibit "3" within the Declaration shall now reference Exhibit "3-A" attached hereto.

7. That the Declarant agrees to develop the Property in conformance with the conditions in Exhibit "3-A" attached hereto;

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County the conditions imposed in the Declaration, as amended, will run with the land identified as the Property and will bind and constitute notice to all later owners, lessees, grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Property, and the County of Maui will have the right to enforce the Declaration, as amended, by appropriate action at law or suit in equity against all persons, except that the Declarant or its successors and assigns may at any time file a petition for the removal of the conditions and terminate the Declaration, as amended, with the petition to be processed in the same manner as petitions for change in zoning.

This First Amendment may be executed in counterparts, each of which will be considered an original but all of which taken together are one and the same First Amendment.

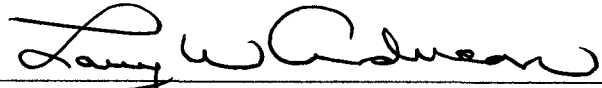
Each person signing this First Amendment represents and warrants that they are duly authorized and have legal capacity to execute and deliver this First Amendment. Each party represents and warrants to the other that the execution and delivery of this First Amendment and the performance of the party's obligations have been duly authorized and that this First Amendment is a valid and legal agreement binding on the party and enforceable in accordance with its terms.

(SIGNATURES ON THE FOLLOWING PAGES)

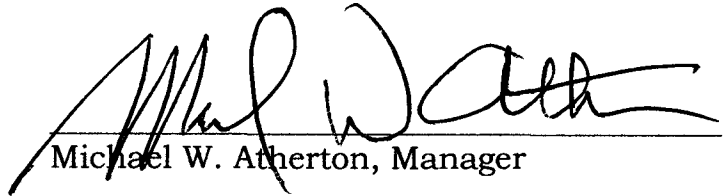
IN WITNESS WHEREOF, the undersigned have executed this First Amendment the day and year first written above.

DECLARANT:

**WAIKAPU PROPERTIES, LLC,
a Hawaii limited liability company**



Larry W. Anderson, Manager

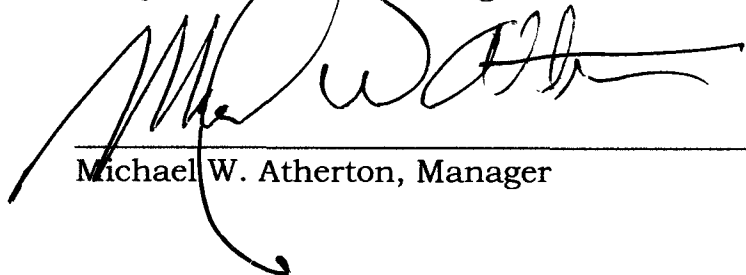


Michael W. Atherton, Manager

**WAIALE 905 PARTNERS, LLC,
a Hawaii limited liability company**



Larry W. Anderson, Manager



Michael W. Atherton, Manager

**MTP LAND PARTNERS, LLC,
a Hawaii limited liability company**



Michael W. Atherton, Manager

Albert G. Boyce V, Manager

**RESTATED WILLIAM S. FILIOS
SEPARATE PROPERTY TRUST DATED
SEPTEMBER 9, 2016**

William S. Filios, Trustee

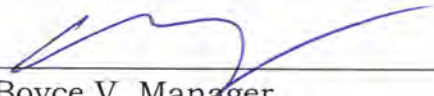
APPROVED AS TO FORM AND LEGALITY:



Department of the Corporation Counsel
County of Maui

**MTP LAND PARTNERS, LLC,
a Hawaii limited liability company**

Michael W. Atherton, Manager



Albert G. Boyce V, Manager

**RESTATED WILLIAM S. FILIOS
SEPARATE PROPERTY TRUST DATED
SEPTEMBER 9, 2016**



William S. Filios, Trustee

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

STATE OF HAWAII

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SS.

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COUNTY OF MAUI

On AUG 11 2023, before me personally appeared LARRY W. ANDERSON and ~~MICHAEL W. ATHERTON~~^{LAURA AMARAL} each as a Manager of Waikapu Properties, LLC, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 24-page FIRST AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING, undated at the time of signature, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



Laura Amaral
Print Name: Laura Amaral
Notary Public, State of Hawaii.

My commission expires: 02/29/2024

STATE OF HAWAII

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SS.

COUNTY OF MAUI

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On August 9, 2023, before me personally appeared ~~LARRY W. ANDERSON and MICHAEL W. ATHERTON~~, each as a Manager of Waikapu Properties, LLC, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 24-page FIRST AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING, undated at the time of signature, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



A handwritten signature in black ink, appearing to read "Kimberly Uradomo", written over a horizontal line.

Print Name: _____

Notary Public, State of Hawaii.

Kimberly Uradomo

My commission expires: 07-02-2026

STATE OF HAWAII

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SS.

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COUNTY OF MAUI

On AUG 11 2023, before me personally appeared LARRY W. ANDERSON and ~~MICHAEL W. ATHERTON~~^{Ma}, each as a Manager of Waiale 905 Partners, LLC, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 24-page FIRST AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING, undated at the time of signature, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



Laura Amaral
Print Name: Laura Amaral
Notary Public, State of Hawaii.

My commission expires: 02/29/2024

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

JK On August 9, 2023, before me personally appeared ~~LARRY W. ANDERSON~~ and MICHAEL W. ATHERTON, each as a Manager of Waiale 905 Partners, LLC, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 24-page FIRST AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING, undated at the time of signature, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



Kimberly Uradomo

Print Name: _____

Notary Public, State of Hawaii.

Kimberly Uradomo

My commission expires: 07-02-2026

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

On August 9, 2023, before me personally appeared MICHAEL W. ATHERTON, as a Manager of MTP Land Partners, LLC, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed this 24-page FIRST AMENDMENT TO UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING, undated at the time of signature, in the Second Circuit of the State of Hawaii, as the free act and deed of such person(s), and if applicable, in the capacity(ies) shown, having been duly authorized to execute such instrument in such capacity(ies).



A handwritten signature in black ink, appearing to read "Kimberly Uradomo", written over a horizontal line.

Print Name: _____

Notary Public, State of Hawaii.

Kimberly Uradomo

My commission expires: 07-02-2026

ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN JOAQUIN)

On August 9, 2023 before me, HEATHER GILBERT, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared Albert G. Boyce V. Manager,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of SAN JOAQUIN)

On August 8, 2023 before me, HEATHER GILBERT, NOTARY PUBLIC
(insert name and title of the officer)

personally appeared William S. Filios, Trustee,
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing
paragraph is true and correct.

WITNESS my hand and official seal.

Signature



(Seal)



EXHIBIT “3-A”

CONDITIONS OF ZONING

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

1. Transportation – State Department of Transportation, Highways Division (SDOT-H).
 - a. Landowners shall mitigate all Project-generated traffic impacts as required by the SDOT-H. Landowners shall enter into an agreement regarding the scope and timing of required traffic improvements to mitigate the traffic-related impacts of the project on SDOT-H facilities as generally indicated in the project’s Pro Rata Share Calculations for Waikapu Country Town Project dated June 29, 2018, as approved by SDOT-H. Alternatively, Landowners may, subject to agreement with SDOT-H, provide additional residential workforce housing units in the project in lieu of providing funding or constructing traffic improvements to mitigate the traffic-related impacts of the project. The agreement shall be executed prior to the approval of the first subdivision application to the County of Maui for the project.
 - b. Landowners shall fully fund the project intersection with Honoapiilani Highway only at the Main Street Intersection (also referred to as Study Intersection #9 in the TIAR/EIS). Landowners are solely responsible for funding the Main Street intersection improvements. Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, provide additional residential workforce housing units in the project in lieu of providing funding or constructing the intersection with Honoapiilani Highway at the Waiale Road Extension intersection (also referred to as Study Intersection #13 in the TIAR/EIS).
 - c. Landowners shall conduct an analysis of the suitability of a roundabout at the required Honoapiilani Highway and Main Street Intersection. Landowners shall transmit its analysis with findings to the SDOT-H; County of Maui, Department of Planning (Department); and the County of Maui, Department of Public Works (DPW). The SDOT-H shall determine if such a roundabout or traffic signal must be funded by Landowners.

- d. Landowners shall provide pedestrian crossings on Honoapiilani Highway at the intersection of Main Street and ensure that the development layout provides pedestrian routes to this pedestrian crossing. Landowners are not constructing the Waiale Road Extension or the Waiale Road Extension intersection with Honoapiilani Highway. Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, provide additional residential workforce housing units in the project in consideration of the County providing pedestrian crossings on Honoapiilani Highway at the intersection of the Waiale Road Extension.

SDOT-H will confirm compliance with this condition.

2. Transportation – State Department of Transportation, Airports Division (SDOT-A). Landowners shall work with SDOT-A to confirm compliance with the Federal Aviation Administration or other relevant government agency's guidelines and regulations regarding aircraft passage or airport operations at the Kahului Airport.
3. Transportation – DPW.
 - a. Landowners shall conduct a pro rata traffic share study for the Waiale Road Extension and transmit it to DPW for review and approval prior to the County's approval of the first subdivision application for the project. The pro rata share study shall evaluate the project's percentage of future vehicle trips on the Waiale Road Extension from Waiko Road to Honoapiilani Highway.
 - b. Landowners shall enter into an agreement with DPW regarding the project's pro rata share contribution to the Waiale Road Extension from Waiko Road to Honoapiilani Highway. The agreement shall determine the project's pro rata share of the total anticipated costs for design and construction of the future Waiale Road Extension and the methods and timing by which the payments or similar contributions are made. Alternatively, Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, provide additional residential workforce housing units in lieu of contributing funding for the design and construction of the future Waiale Road Extension. Further, Landowners shall deed the Waiale Road Extension right-of-way to DPW, upon demand, the value of which shall not be considered towards the pro rata share used in the agreement. The agreement shall be executed prior to

the approval of the first subdivision application to the County of Maui for the project. DPW shall confirm compliance with this condition.

4. Stormwater Management and Drainage. Landowners shall maintain existing drainage patterns to the maximum extent feasible and shall implement Best Management Practices (BMPs) to: a) minimize infiltration and runoff from construction and vehicle operations, b) reduce or eliminate the potential for soil erosion and ground water pollution, and c) formulate dust control measures to be implemented during and after the construction process in accordance with Department of Health (DOH) and County of Maui guidelines, ordinances and rules. The BMPs shall include a program for the maintenance of drainage swales within the Project Area. The design of drainage improvements and maintenance approved by the DPW shall not increase runoff from the Project Area as a result of an increase in impervious surfaces. The DPW shall confirm compliance with this condition.
5. Residential Workforce Housing. Landowners shall provide residential workforce housing opportunities in accordance with the County of Maui's residential workforce housing requirements. The required number of residential workforce housing units as determined by the County of Maui shall be completed as required by Chapter 2.96.060, Maui County Code, and as agreed to by the Department of Housing and Human Concerns. Further provided, all residential workforce housing units in the project are subject to the following deed restriction periods:
 - a. "Below-moderate income," ten years.
 - b. "Moderate income," eight years.
 - c. "Above-moderate income," five years.

Landowners will not seek project approvals authorized by Chapter 201H, Hawaii Revised Statutes, or similar project approvals for this project.

6. Wastewater. Landowners shall participate in the funding and construction of adequate private or public wastewater facilities for the Project Area. The wastewater facilities shall be in accordance with the applicable standards and requirements of the DOH and the County of Maui as applicable. If Landowners' proposed wastewater facilities are to be located within the State agricultural district, Landowners shall apply for a State Special Permit in accordance with the provisions of Chapter 205, Hawaii Revised Statutes. Alternatively, Landowners may, subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, provide additional residential workforce housing units in the project in lieu of

participating in the funding and construction of adequate private or public wastewater facilities. Subject to the Public Private Partnership Agreement County of Maui – Waikapu Country Town, dated April 28, 2022, as may be amended, an interim connection to the Wailuku/Kahului Wastewater Treatment Facility for 100,000 gallons per day of wastewater may be made available for the project, provided that upon the County's new wastewater treatment facility in the vicinity of the project coming online, the project's wastewater may be diverted to the County's new wastewater treatment facility. If Landowners desire to request an initial or interim connection to County wastewater facilities for any dwellings, an agreement must be made to the satisfaction of the Department of Environmental Management and other applicable agencies prior to the issuance of any building permit. County or private operable wastewater facilities must be available to serve any use or structure prior to the issuance of the building permit for such use or structure.

7. Air Quality. Landowners shall participate in an air quality monitoring program as required by the DOH.
8. Education Contribution Agreement. Landowners shall contribute to the development, funding, and construction of school facilities in compliance with the Educational Contribution Agreement for Waikapu Country Town, undated but executed as of January 31, 2017, entered into by Landowners and the Department of Education, as may be amended. 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, as may be amended. Such notice shall be recorded and run with the land.
9. Energy Conservation Measures. Landowners shall implement measures to promote energy conservation, sustainable design and environmental stewardship including the use of solar water heating and photovoltaic systems for on-site infrastructure systems, residential, commercial, and civic uses. Solar water heating systems shall be required for new single-family residential construction per Section 196-6.5, Hawaii Revised Statutes. Landowners shall provide information to home purchasers regarding energy conservation measures that may be undertaken by individual homeowners in the Project Area. Verification of compliance with this condition shall be provided to the Department prior to submitting any building permit application.
10. Water Conservation Measures. Landowners shall implement water conservation measures and BMPs such as the use of indigenous plants and as required by the County of Maui. Verification of compliance with

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

11. **Water System.** Landowners shall participate in the funding and construction of adequate private or public water source, storage, and transmission facilities to accommodate the proposed uses for each subdivision in the Project Area in accordance with the applicable standards and requirements of the DOH and the County of Maui, with plans submitted for approval by the appropriate agency. Landowners shall coordinate with the Commission on Water Resources Management regarding the overall impact of water pumpage on the Waikapu aquifer. Further, Landowners shall submit such information to the Department of Water Supply as may be requested to reflect changes in water demand forecasts and supply for the proposed uses in accordance with the County of Maui's Water Use and Development Plan. Compliance with this condition shall be confirmed by the Department of Water Supply.
12. **Street Lights.** Landowners shall use fully shielded street lights within the Project Area to avoid impacts to avifauna and other wildlife populations and to prevent light diffusion into the night sky.
13. **Sirens.** Landowners shall fund and install three (3) civil defense warning sirens as specified by and in the locations identified by the State Department of Defense according to a timetable agreed upon by the State Department of Defense.
14. **Parks.** Landowners shall comply with the park dedication requirements of the County of Maui. Landowners shall provide a park construction and phasing plan approved by the Department of Parks and Recreation, DPW, and Department of Planning, which shall be in accordance with the Maui County Code. Landowners shall develop parks and recreational areas that may be used by all ages and are not used primarily as water retention basins.
15. **Established Gathering and Access Rights Protected.** Pursuant to Article XII, Section 7 of the Hawaii State Constitution, Landowners shall preserve and protect any established gathering and access rights of Native Hawaiians who have customarily and traditionally used the Project Area to exercise subsistence, cultural, gathering, and religious practices or for access to other areas for such purpose.
16. **Agricultural Easement.** Landowners shall submit to the Department an executed copy of the conservation easement or relevant instrument for 877.50 acres of adjacent agricultural lands as represented to the State of Hawaii Land Use Commission and to the County of Maui and depicted in Exhibit "1" to Ordinance 4998 (2019) prior to the first final subdivision

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

17. Notification of Agricultural Use. Landowners, and all subsequent owners, shall disclose to developers, purchasers, and lessees of the provisions of Chapter 165, Hawaii Revised Statutes, the Hawaii Right to Farm Act. The notice and disclosure shall be a part of any conveyance document such as a deed, lease, or agreement of sale. The notice and disclosure shall contain at least the following information: a) that the developers, purchasers, and lessees shall not take any action that would interfere with or restrain farming operations conducted in a manner consistent with generally accepted agricultural and management practices on adjacent lands in the State Land Use Agricultural District; and b) that potential nuisances from noise, odors, dust, fumes, spray, smoke, or vibration may result from agricultural uses on adjacent lands. For the purpose of this condition, the term "farming operations" shall have the same meaning as provided in Section 165-2, Hawaii Revised Statutes.

18. Archaeological and Historic Sites. Landowners shall provide the following prior to any ground disturbance, including the issuance of grading or grubbing permits, as agreed upon with DLNR-SHPD's acceptance of Landowners' Archaeological Inventory Survey: a) Archaeological monitoring for all ground disturbing activities pursuant to a DLNR-SHPD approved monitoring plan, which shall include data recovery of archaeological and historic sites; b) If site 50-50-04-5197 (Waihee Ditch) is impacted by the Project, it will be further documented in consultation with DLNR-SHPD; c) If any development is proposed for the area to be dedicated to agriculture, DLNR-SHPD shall be notified and will make a determination on whether an archaeological inventory survey is to be provided by Landowners; d) Landowners shall submit a preservation plan to DLNR-SHPD for two (2) sites: the irrigation features (Site 50-50-04-7884) and the WWII bunker (Site 50-50-04-7883); and e) If there is an inadvertent discovery of single or multiple human skeletal remains, Landowners shall provide written consent to DLNR-SHPD extending for at least 30 days the statutory timeline outlined in Section 13-300-40, Hawaii Administrative Rules. The preservation plan shall be submitted to the DLNR-SHPD for review and acceptance prior to any ground disturbance in the vicinity of the two (2) sites. Landowners shall comply with all interim and permanent mitigation and preservation measures required by DLNR-SHPD. Landowners shall provide verification to the Department that DLNR-SHPD has determined that all required historic preservation measures have been implemented. Landowners shall notify DLNR-SHPD prior to the first ground disturbance activity.
19. Cultural. Landowners shall consult with those persons known as Waikapu Stream South Kuleana Lo'i Kalo Farmers and Hui o Na Wai 'Eha to minimize the impacts on their traditional customary rights and practices from any development in the Project Area. Additionally, Landowners shall grant access easements over the appropriate portions of the Project Area in favor of the owners of the Mahi-Puleloa parcels, identified as LCA 2944:3 to Ehunui (TMK: (2) 3-6-005:010) and as Grant 1513 to Ehunui (TMK: (2) 3-6-005:009) and in favor of the owners of the Kauihou parcels, identified as LCA 3340:1 (por.) to Nahau (TMK: (2) 3-6-005:067), as LCA 3103 to Kalawaia (TMK: (2) 3-6-005:014) and as LCA 3110:3.2 to Kuolaia (TMK: (2) 3-6-005:066). The easements shall be recorded and run with the land.
20. Endangered Species. Landowners shall implement the following procedures to avoid potential impacts to endangered species: a) Landowners shall not clear dense vegetation, including woody plants greater than fifteen feet (15 ft.) in height, along the periphery of the Project Area during the period from June 1 to September 15 of each year, which is the time that the Hawaiian hoary bat may be carrying young

and thus could be at risk from the clearing activities; b) landowners shall consult with the United States Fish and Wildlife Service to determine measures needed with regard to the endangered Blackburn's Sphinx Moth and shall implement such measures in connection with the development of the Project Area; and c) for any nighttime work required during any construction within the Project Area and for long term features, exterior lighting shall be shielded so as to reduce the potential for interactions of or disturbance to Hawaiian Petrels and Newell's Shearwaters.

21. Development in Compliance with Maui Island Plan. Landowners shall develop the Project in substantial compliance with the Planned Growth Area Rationale and goals, objectives, policies, and implementing actions described in the Maui Island Plan for the Project identified as "Waikapu Tropical Plantation Town."
22. Infrastructure Deadline. Landowners shall complete construction of the backbone infrastructure, which consists of primary roadways and access points; internal roadways; on-site and off-site water, sewer, and electrical system improvements; and stormwater and drainage and other utility improvements within ten (10) years from the date of the first final subdivision approval.
23. Compliance with Representations to the Maui County Council. Landowners shall develop the Project Area in substantial compliance with the representations made to the Maui County Council in its approval of the subject change in zoning. Failure to develop the Project Area in accordance with such representations may result in enforcement, including reversion of the Project Area to its former zoning and community plan classifications.
24. Annual Reports. Landowners shall provide the Department an annual report on the status of the development of the Project Area and Landowners' progress in complying with the conditions imposed herein. The first annual report shall be submitted within one (1) year of the effective date of the CIZ ordinance, and subsequent reports shall be submitted annually on or near the same date.
25. The Project Area's Agricultural Master Plan, as set forth in Chapter III, Section 5 of the project's Final EIS identifies an agricultural preserve that is subject to an agricultural conservation easement, and a balance of approximately 270 acres that is mauka of Honoapiilani Highway, for which the zoning remains agriculture. The approximately 270-acre area is depicted in Exhibit "2" of Ordinance 4998 (2019) as being a portion of Lot 6 and identified as the Mauka Agricultural Lands. The use of the 270-acre area is restricted to the permitted principal uses in the

County's Agricultural District and to only the following accessory uses: two farm dwellings per lot, one of which shall not exceed 1,000 square feet of developable area; storage, wholesale, and distribution facilities associated with agriculture in the County; processing of agricultural products; small-scale energy systems; small-scale animal-keeping; non-commercial open land recreation uses; and other uses that primarily support a permitted principal use, provided that such uses shall be approved by the appropriate planning commission as conforming to the intent of the County's Agricultural District. Landowners shall not seek county special use permits; state special permits; or approvals under Chapter 201H, Hawaii Revised Statutes. If subdivided, the 270-acre area shall consist of no more than five lots. Landowners shall record with the bureau of conveyances, or land court, as appropriate, this condition on property identified for real property tax purposes as tax map key (2) 3-6-004:003, as pertaining to the 270-acre area and provide proof of recordation to the Maui County Council prior to the first final subdivision approval, and such condition shall run with the land and bind all future owners or lessees of the area.

26. Landowners shall, prior to the first final subdivision approval, implement as described the following priority projects in the Integrated Natural-Cultural Resource Preservation & Management Plan, dated June 2019, and attached as Exhibit "3" of Ordinance 4998 (2019):

A. Waikapū Watershed Management

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

B. Waikapū Stream

1. Priority Project #1 - comply with instream flow standards and State water use permits.
2. Priority Project #2 - support the kuleana `auwai restoration in South Waikapū to the extent practicable.

C. Land and Cultural Resources

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

4. Priority Project #4 - Integrate Waikapū ethnohistorical resources throughout the Project Area.
27. Landowners shall submit all street names in the Project Area for review and approval to the Public Works Commission. Streets in the Project Area shall be named in consideration of traditional land divisions, trade winds, and other natural and cultural factors relevant to the Project Area.

END OF EXHIBIT "3-A"