

# REQUEST FOR LEGAL SERVICES

**Date:** November 16, 2017  
**From:** Robert Carroll, Chair  
Land Use Committee

**TRANSMITTAL**

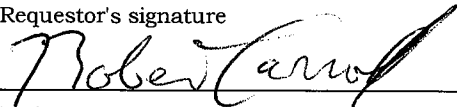
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: David Galazin, Esq.

**Subject:** DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN AMENDMENT, AND CHANGE IN ZONING FOR THE PROPOSED PAIA COURTYARD PROJECT AT 120 BALDWIN AVENUE, PAIA, MAUI (PAIA) (LU-13)

**Background Data:** Please review and, if appropriate, approve as to form and legality the attached proposed Change in Zoning bill incorporating the revised conditions of zoning attached hereto. Please provide a hard copy of the bill with your response.

**Work Requested:** ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature  Robert Carroll	Contact Person <u>Carla Nakata or Alec Wagner</u> (Telephone Extension: 7659 or 7662, respectively)
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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): November 21, 2017, 10 a.m.  
REASON: For posting on the November 29, 2017, meeting 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)

## **CONDITIONS OF ZONING**

1. That Paia 2020, LLC, and the David R. Spee Revocable Trust, dated November 16, 2009, shall start construction of the proposed 56 independent senior living units within two years of the Maui Planning Commission's approval of the Special Management Area permit for the project, unless Paia 2020, LLC, and the David R. Spee Revocable Trust, dated November 16, 2009, can demonstrate to the satisfaction of the planning director that unforeseen delays prevented compliance with this condition. Start of construction shall mean the visible start of grading, pursuant to a valid grading permit as needed for the development of the 9.038-acre project site.
2. That Paia 2020, LLC, and the David R. Spee Revocable Trust, dated November 16, 2009, shall complete construction of all 56 independent senior living units on the project site, with related roads and infrastructure, within three years from the start of construction, unless Paia 2020, LLC, and the David R. Spee Revocable Trust, dated November 16, 2009, can demonstrate to the satisfaction of the planning director that unforeseen delays prevented compliance with this condition.
3. That Paia 2020, LLC, and the David R. Spee Revocable Trust, dated November 16, 2009, shall develop at their own cost a well for non-potable water for irrigation with a yield sufficient to meet the annual non-potable water demand of the project.
4. That Paia 2020, LLC, and the David R. Spee Revocable Trust, dated November 16, 2009, shall complete all project infrastructure, such as curbs, gutters, sidewalks, roadways, and irrigation systems, prior to issuance of any certificate of occupancy for the project.
5. That Paia 2020, LLC, and the David R. Spee Revocable Trust, dated November 16, 2009, shall retain all drainage and storm water run-off generated by the project onsite.
6. That Paia 2020, LLC, and the David R. Spee Revocable Trust, dated November 16, 2009, shall develop the project in strict compliance with the representations made to the Maui County Council in obtaining approval of this ordinance.
7. That Paia 2020, LLC, and the David R. Spee Revocable Trust, dated November 16, 2009, shall ensure the sales prices for the independent senior living units being provided pursuant to the County's Residential Workforce Housing Policy are in conformance with the requirements of Chapter 2.96, Maui County Code.

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2017)

A BILL FOR AN ORDINANCE TO CHANGE ZONING  
FROM INTERIM DISTRICT AND AGRICULTURAL DISTRICT  
TO B-CT COUNTRY TOWN BUSINESS DISTRICT (CONDITIONAL ZONING)  
FOR PROPERTY SITUATED AT PAIA, MAUI, HAWAII,  
TAX MAP KEY (2) 2-5-005:063 (POR.)

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

SECTION 1. Pursuant to Chapters 19.15 and 19.510, Maui County Code, a change in zoning from Interim District to B-CT Country Town Business District (Conditional Zoning) is hereby granted for that certain real property situated at Paia, Maui, Hawaii, and identified for real property tax purposes as a portion of tax map key (2) 2-5-005:063, containing an area of 1.102 acres, more or less, and more particularly described as "Area A" in Exhibit "A," attached hereto and made a part hereof, and on Land Zoning Map No. L-1526, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

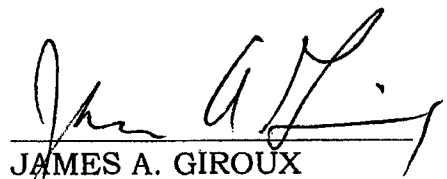
SECTION 2. Pursuant to Chapters 19.15 and 19.510, Maui County Code, a change in zoning from Interim District to B-CT Country Town Business District (Conditional Zoning) is hereby granted for that certain real property situated at Paia, Maui, Hawaii, and identified for real property tax purposes as a portion of tax map key (2) 2-5-005:063, containing an area of 2.933 acres, more or less, and more particularly described as "Area B" in Exhibit "A," attached hereto and made a part hereof, and on Land Zoning Map No. L-1526, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 3. Pursuant to Chapters 19.15 and 19.510, Maui County Code, a change in zoning from Agricultural District to B-CT Country Town Business District (Conditional Zoning) is hereby granted for that certain real property situated at Paia, Maui, Hawaii, and identified for real property tax purposes as a portion of tax map key (2) 2-5-005:063, containing an area of 5.003 acres, more or less, and more particularly described as "Area C" in Exhibit "A," attached hereto and made a part hereof, and on Land Zoning Map No. L-1526, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 4. Pursuant to Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the conditions set forth in Exhibit "B," attached hereto and made a part hereof, and the Unilateral Agreement and Declaration for Conditional Zoning attached hereto and made a part hereof as Exhibit "C."

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

A handwritten signature in black ink, appearing to read "James A. Giroux", is written over a horizontal line.

JAMES A. GIROUX  
Deputy Corporation Counsel  
County of Maui  
2017-0095  
LU-13 2017-08-28 Ordinance

AREA A

LOT A-1-A

PAIA POST OFFICE SUBDIVISION

AT HAMAKUAPOKO AND HALIIMAILE, MAKAWAO, MAUI, HAWAII

BEING A PORTION OF THE LAND DEEDED BY THE

BOARD OF EDUCATION TO THE TRUSTEES OF OAHU COLLEGE,

DATED: JANUARY 30, 1860 RECORDED IN LIBER 12,

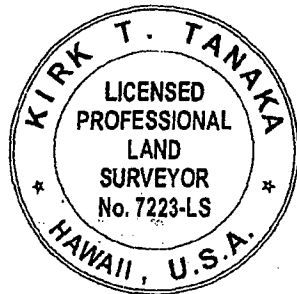
PAGE 403 AND ROYAL PATENT 7512

Beginning at the West corner of this Area, being also the West corner of Lot A-1-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU NENE 2" being 5,493.68 feet North and 5,823.42 feet East and running by azimuths measured clockwise from True South:

1. 65° 48' 113.00 feet along Lot A-2;
2. 155° 47' 50" 461.90 feet along Area B;
3. 274° 29' 104.85 feet along Area D;
4. Thence, along Baldwin Avenue on a curve to the right with a radius of 327.10 feet, the radial azimuth to the point of curve being 225° 08' 50" and the radial azimuth to the point of tangent being 245° 47' 50", the chord azimuth and distance being:  
325° 28' 20" 117.25 feet;

EXHIBIT " **A**

5. 335° 47' 50" 296.22 feet along Lot A-1-D (Roadway Widening Lot) to the point of beginning and containing an area of 1.102 Acre.



R. T. TANAKA ENGINEERS, INC.

A handwritten signature in cursive script, appearing to read "Kirk T. Tanaka".

Kirk T. Tanaka  
Licensed Professional Land Surveyor  
Certificate No. 7223

License Expires: April 30, 2018  
871 Kolu Street, Suite 201  
Wailuku, Hawaii 96793

February 14, 2017

AREA B

LOT A-1-A

PAIA POST OFFICE SUBDIVISION

AT HAMAKUAPOKO AND HALIIMAILE, MAKAWAO, MAUI, HAWAII

BEING A PORTION OF THE LAND DEEDED BY THE

BOARD OF EDUCATION TO THE TRUSTEES OF OAHU COLLEGE,

DATED: JANUARY 30, 1860 RECORDED IN LIBER 12,

PAGE 403 AND ROYAL PATENT 7512

Beginning at the Northwest corner of this Area, being also the Northeast corner of Area C, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU NENE 2" being 5,926.58 feet North and 5,307.35 feet East and running by azimuths measured clockwise from True South:

1. 276° 00' 116.65 feet along Lots 35 and 36, Tavares Tract;
2. 287° 00' 81.77 feet along Lot 36, Tavares Tract and Area D;
3. 37° 25' 23.18 feet along Area D;
4. 274° 29' 43.64 feet along Area D;
5. 335° 47' 50" 461.90 feet along Area A;
6. 65° 48' 277.21 feet along Lot A-2 and Area C;

7. 164° 53'

614.10 feet along Area C to the point of beginning and containing an area of 2.933 Acre.



871 Kolu Street, Suite 201  
Wailuku, Hawaii 96793

February 14, 2017

R. T. TANAKA ENGINEERS, INC.

A handwritten signature in cursive script, appearing to read "K. T. Tanaka".

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Kirk T. Tanaka  
Licensed Professional Land Surveyor  
Certificate No. 7223  
License Expires: April 30, 2018



AREA C

LOT A-1-A

PAIA POST OFFICE SUBDIVISION

AT HAMAKUAPOKO AND HALIIMAILE, MAKAWAO, MAUI, HAWAII

BEING A PORTION OF THE LAND DEEDED BY THE

BOARD OF EDUCATION TO THE TRUSTEES OF OAHU COLLEGE,

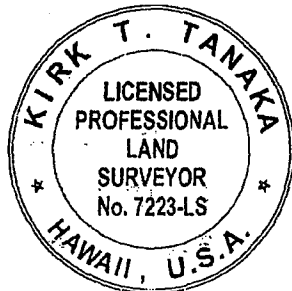
DATED: JANUARY 30, 1860 RECORDED IN LIBER 12,

PAGE 403 AND ROYAL PATENT 7512

Beginning at the Northeast corner of this Area, being also the Northwest corner of Area B, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU NENE 2" being 5,926.58 feet North and 5,307.35 feet East and running by azimuths measured clockwise from True South:

1. 344° 53' 614.10 feet along Area B;
2. 245° 48' 127.73 feet along Area B;
3. 335° 48' 174.70 feet along Lot A-2;
4. 115° 04' 50" 1,021.48 feet along Lot A-1-B;
5. 250° 15' 86.37 feet along Lot A-1-B;
6. 239° 39' 278.50 feet along Parcels 46 and 28 of Tax  
Map Key: (2) 2-6-03;
7. 244° 52' 167.30 feet along Lots 27 to 31, Tavares  
Tract;

8. 256° 00' 107.00 feet along Lots 31, 32 and 35, Tavares Tract to the point of beginning and containing an area of 5.003 Acres.



871 Kolu Street, Suite 201  
Wailuku, Hawaii 96793

February 14, 2017

R. T. TANAKA ENGINEERS, INC.

A handwritten signature in cursive script, appearing to read "Kirk T. Tanaka".

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Kirk T. Tanaka  
Licensed Professional Land Surveyor  
Certificate No. 7223  
License Expires: April 30, 2018

## **CONDITIONS OF ZONING**

1. That Paia 2020, LLC shall start construction of the proposed 56 independent senior living apartments within two years of the Maui Planning Commission's approval of the Special Management Area permit for the project, unless Paia 2020, LLC can demonstrate to the satisfaction of the planning director that unforeseen delays prevented compliance with this condition. Start of construction shall mean the visible start of grading, pursuant to a valid grading permit as needed for the development of the 9.038-acre project site.
2. That Paia 2020, LLC shall complete construction of all 56 independent senior living apartments on the project site, with related roads and infrastructure, within three years from the start of construction, unless Paia 2020, LLC can demonstrate to the satisfaction of the planning director that unforeseen delays prevented compliance with this condition.
3. That Paia 2020, LLC shall develop at its own cost a well for non-potable water for irrigation with a yield sufficient to meet the annual non-potable water demand of the project.
4. That all project infrastructure, such as curbs, gutters, sidewalks, roadways, and irrigation systems, shall be completed prior to issuance of any certificate of occupancy for the project.
5. That drainage and storm water run-off generated by the project shall be retained entirely onsite.
6. That Paia 2020, LLC shall develop the project in strict compliance with the representations made to the Maui County Council in obtaining approval of this ordinance.
7. That the sales prices for the 56 independent senior living apartments shall be in conformance with guidelines and requirements administered by the Department of Housing and Human Concerns, and all 56 independent senior living apartments shall remain affordable in perpetuity.

**EXHIBIT** B