

REQUEST FOR LEGAL SERVICES

RECEIVED
CORPORATION COUNSEL

Date: July 13, 2020

From: Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

'20 JUL 14 09:15

TRANSMITTAL

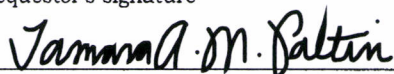
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: **DISTRICT BOUNDARY AMENDMENT, COMMUNITY PLAN AMENDMENT, AND CHANGE IN ZONING FOR THE PROPOSED PAIA COURTYARD PROJECT** (PSLU-8)

Background Data: Please review the attached Unilateral Agreement and Change in Zoning bill and, if appropriate, approve them as to form and legality. If revisions are required, please email a Word document with track changes.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

Requestor's signature  Tamara Paltin	Contact Person Richard E. Mitchell or Ana Lillis (Telephone: 270-7662 or 270-7660, respectively)
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☐ ROUTINE (WITHIN 15 WORKING DAYS)
☐ PRIORITY (WITHIN 10 WORKING DAYS)

☐ RUSH (WITHIN 5 WORKING DAYS)
☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): July 15, 2020

REASON: For posting on July 17, 2020 for the July 24, 2020 Council meeting agenda

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO: MJH	ASSIGNMENT NO. 2019-0101	BY: MJH
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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

MICHAEL J. HOPPER

Date JUL 15 2020

By _____ (Rev. 7/03)

pslu:ltr:08acc03:alkl

Attachments

ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE TO CHANGE ZONING
FROM INTERIM DISTRICT TO B-CT COUNTRY TOWN BUSINESS DISTRICT
AND PUBLIC/QUASI-PUBLIC (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. In accordance with 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 granted for the 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 1.10 acres, more or less, and more particularly described as "Area A" in Exhibit "1," which is attached and incorporated into this ordinance, and on Land Zoning Map 1527 in Exhibit "3", which is on file in the Office of the County Clerk of the County of Maui and incorporated by reference into this ordinance, and subject to the conditions established in Exhibit "4."

SECTION 2. In accordance with Chapters 19.15 and 19.510, Maui County Code, a change in zoning from Interim District to Public/Quasi-Public (conditional zoning) is 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 2.93 acres, more or less, and more particularly described as "Area B" in Exhibit "2," which is incorporated into

this ordinance, and on Land Zoning Map 1527 in Exhibit "3", which is on file in the Office of the County Clerk of the County of Maui and incorporated by reference into this ordinance, and subject to the conditions established in Exhibit "4."

SECTION 3. In accordance with Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the conditions established in Exhibit "4," which is incorporated into this ordinance, and the Unilateral Agreement and Declaration of Conditional Zoning, which is attached and incorporated into this ordinance as Exhibit "5."

SECTION 4. This ordinance takes effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

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

Department of the Corporation Counsel
County of Maui

pslu:misc:008abil02

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;
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.

EXHIBIT "/"

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.

EXHIBIT "2"

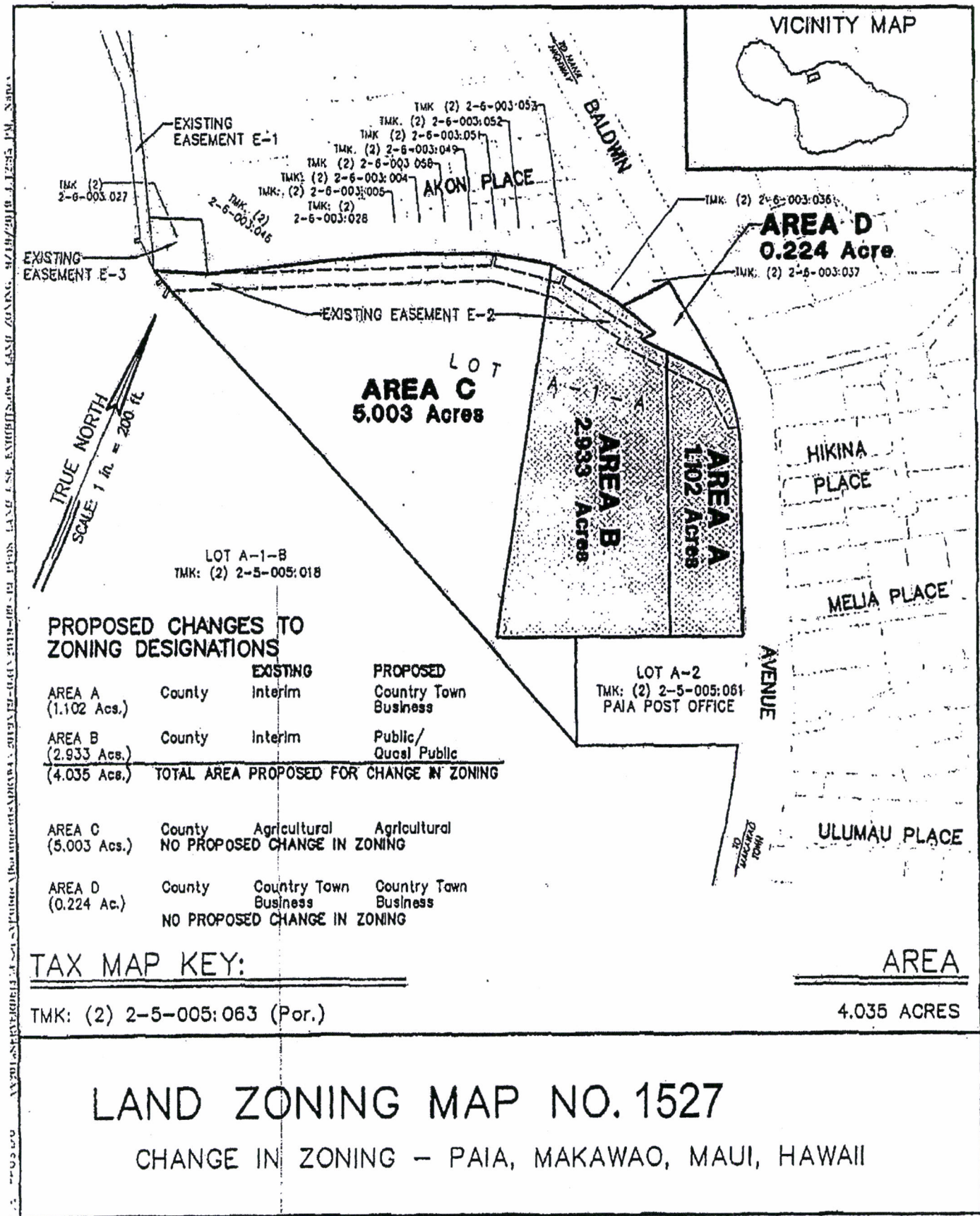


EXHIBIT "3"

EXHIBIT "4"

CONDITIONS OF ZONING

1. As represented to the Maui County Council, Paia 2020, LLC and the David R. Spee Revocable Trust must offer to dedicate the property designated as "Area B" in Exhibit "3" attached hereto to the County of Maui at no cost to the County.
2. Paia 2020, LLC and the David R. Spee Revocable Trust must develop the Property in substantial compliance with the submittals and representations made by Paia 2020, LLC and the David R. Spee Revocable Trust to the Maui County Council and the Council's Planning and Sustainable Land Use Committee in its approval of the subject change in zoning. Failure to develop "Area A" in Exhibit "3" in accordance with such submittals and representations may result in enforcement, including reversion of the "Area A" in Exhibit "3" to its former zoning.

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail ☒ Pickup () : To:
Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

Total Number of Pages: 10
(including exhibits, notary certification pages, and all other components)

AffectsTaxMapKey(Maui) (2) 2-5-005:063 (POR.)

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, referred to as "Declaration" or "Unilateral Agreement," is made this 15TH day of JULY, 2020, by the following "Declarants," who are owners of real property located at 120 Baldwin Avenue, Pa'ia, Hawai'i, referred to as "the Property," comprised of 4.035 acres, and identified for real property tax purposes as Tax Map Key (2) 2-5-005:063 (por.):

Paia 2020, LLC, a Hawai'i limited liability company whose principal place of business is at 62 Baldwin Avenue, Unit 2B, Pa'ia, Hawai'i, and whose manager is David R. Spee, and

David R. Spee Revocable Trust.

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai'i is considering the establishment of zoning for a 1.10-acre portion of the Property, described as Area "A" in Exhibit "1" and more particularly identified in Exhibit "3," Land Zoning Map 1527; and

WHEREAS, the Council is considering the establishment of zoning for a 2.93-acre portion of the Property, described as Area "B" in Exhibit "2" and more particularly identified in Exhibit "3," Land Zoning Map 1527; and

WHEREAS, the Planning and Sustainable Land Use Committee recommended

passage on first reading of a Conditional Zoning bill in accordance with Section 19.510.050, Maui County Code; and

WHEREAS, the Declarants have agreed to execute this Unilateral Agreement in accordance with Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarants make the following Declaration:

1. That this Declaration is made in accordance with the provisions of Section 19.510.050, Maui County Code, relating to Conditional Zoning;

2. That until written release by the County of Maui, (a) the Property, and all its parts, are held subject to this Declaration's covenants, conditions, and restrictions, which are effective as to and run with the Property, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawai'i, without the execution, delivery, or recordation of any further deed, instrument, document, agreement, declaration, covenant, or the like with respect to the Property by the Declarants, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; (b) the acquisition of any right, title or interest in or with respect to the Property by any person or entity constitute acceptance of all of the covenants, conditions, and restrictions of this Declaration by the person or entity; and (c) upon any transfer of any right, title, or interest in or with respect to the Property, the transferee assumes, is bound by, and is obligated to observe and perform all of the covenants, conditions, and restrictions of this Declaration;

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

4. That the term "Declarants" and any pronoun in reference to it, wherever used in this Declaration, means the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and includes any corporation or any other entity, and means and includes the Declarants, the Declarants' heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That this Declaration is fully effective on the effective date of the Condition Zoning ordinance approving the establishment of a Change in Zoning from Interim District to B-CT Country Town Business District for Area "A" and a Change in Zoning from Interim District to Public/Quasi-Public for Area "B";

6. That the Declarants agree to develop the Property in conformance with the conditions stated in Exhibit "4" and in the Conditional Zoning ordinance;

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

8. AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration run with the land identified in this Declaration and bind and constitute notice to all subsequent owners, lessees, grantees, assignees, mortgagees, lienors, and any other persons who claim an interest in the Property. The Declarants further understand and agree that the County of Maui has the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, with the understanding the Declarants or their successors and assigns may at any time file a petition with the Council or the Department for the removal of the conditions and termination of this Unilateral Agreement, which will be processed in the same manner as petitions for Change in Zoning.

This Declaration may be executed in counterparts, each of which will be deemed to be an original, but all of which, taken together, constitute one and the same Declaration.

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

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Declaration on the day and year indicated on the following notary public certification pages.

DECLARANTS:

Paia 2020, LLC



Name of signer: DAVID R. SPEE

Title of signer: MANAGER

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 15th day of July, 2020, before me personally appeared David R. Spee, 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.

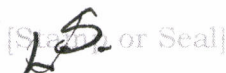
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public, State of Hawaii

Print Name: Serena L. Freitas

My Commission Expires: 9/28/2023

 [Seal or Seal]

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

David R. Spee Revocable Trust

DRS

Name of signer: DAVID R. SPEE

Title of signer: TRUSTEE

STATE OF HAWAII)
)
COUNTY OF MAUI) SS.

On this 15th day of July, 2020, before me personally appeared David R. Spee, Trustee, 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.

[Signature]

Notary Public, State of Hawaii

Print Name: Serena L. Freitas

My Commission Expires: 9/28/2023

LS.
[Stamp or Seal]

NOTARY PUBLIC CERTIFICATION

Doc. Date: undated at time of notary # Pages: 10

Notary Name: Serena L. Freitas Judicial Circuit: 2A

Document Description: Unilateral

Agreement and Declaration

for Conditional Forfeiture

Notary Signature: *[Signature]*

Date: 7/15/2020

[Stamp or Seal]
LS.

APPROVED AS TO FORM AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

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,

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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;
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.

EXHIBIT " / "

AREA B

LOT A-1-A

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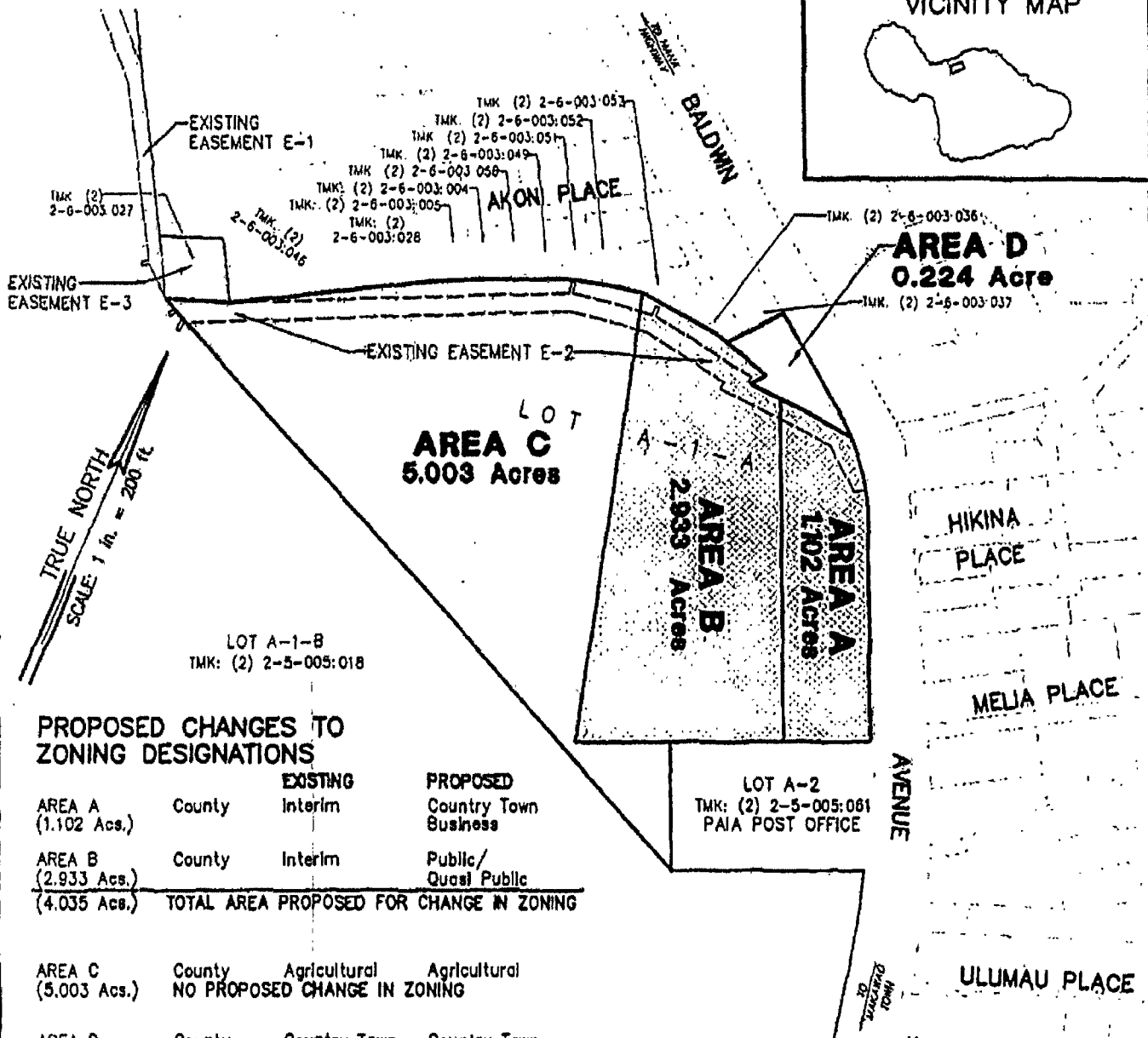
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- | | | | |
|----|--------------|-------------|--|
| 1. | 276° 00' | 116.65 feet | along Lots 35 and 36, Tavares Tract; |
| 2. | 287° 00' | 81.77 feet | along Lot 36, Tavares Tract and Area D; |
| 3. | 37° 25' | 23.18 feet | along Area D; |
| 4. | 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. |

EXHIBIT "2"

VICINITY MAP



PROPOSED CHANGES TO ZONING DESIGNATIONS

AREA	COUNTY	EXISTING	PROPOSED
AREA A (1.102 Acs.)	County	Interim	Country Town Business
AREA B (2.933 Acs.)	County	Interim	Public/ Quasi Public
(4.035 Acs.)	TOTAL AREA PROPOSED FOR CHANGE IN ZONING		

AREA C
(5.003 Acs.) County Agricultural Agricultural
NO PROPOSED CHANGE IN ZONING

AREA D
(0.224 Ac.) County Country Town Country Town
Business Business
NO PROPOSED CHANGE IN ZONING

TAX MAP KEY:

TMK: (2) 2-5-005:063 (Por.)

AREA

4.035 ACRES

LAND ZONING MAP NO. 1527

CHANGE IN ZONING - PAIA, MAKAWAO, MAUI, HAWAII

EXHIBIT "3"

EXHIBIT "4"

CONDITIONS OF ZONING

1. As represented to the Maui County Council, Paia 2020, LLC and the David R. Spee Revocable Trust must offer to dedicate the property designated as "Area B" in Exhibit "3" attached hereto to the County of Maui at no cost to the County.
2. Paia 2020, LLC and the David R. Spee Revocable Trust must develop the Property in substantial compliance with the submittals and representations made by Paia 2020, LLC and the David R. Spee Revocable Trust to the Maui County Council and the Council's Planning and Sustainable Land Use Committee in its approval of the subject change in zoning. Failure to develop "Area A" in Exhibit "3" in accordance with such submittals and representations may result in enforcement, including reversion of the "Area A" in Exhibit "3" to its former zoning.