

# REQUEST FOR LEGAL SERVICES

**Date:** August 28, 2020

**From:** Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

TRANSMITTAL

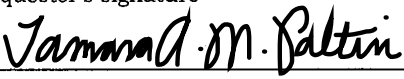
**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Michael Hopper, Esq.

**Subject:** CHANGE IN ZONING BILL FOR THE KILOHANA MAKAI WORKFORCE HOUSING PROJECT (KIHEI) (PSLU-56)

**Background Data:** Please review the attached Change in Zoning bill and, if appropriate, approve it as to form and legality. If revisions are required, please e-mail a Word document with track changes.

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

☐ OTHER:

Requestor's signature  Tamara Paltin	Contact Person <u>Richard E. Mitchell or Ana Lillis</u> (Telephone: ext. 7662 or ext. 7660, 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): September 2, 2020

REASON: For posting on the September 11, 2020 Council 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):

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DEPARTMENT OF THE CORPORATION COUNSEL

Date \_\_\_\_\_

By \_\_\_\_\_

(Rev. 7/03)

pslu:ltr:056acc02:alkl

Attachment

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

BILL NO. \_\_\_\_\_ (2020)

A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM OPEN ZONE TO R-1 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR 6.943 ACRES IN KIHAI, MAUI, HAWAII, IDENTIFIED AS TAX MAP KEY (2) 3-9-004:141

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

SECTION 1. In accordance with Chapters 19.08 and 19.510, Maui County Code, a change in zoning from Open Zone to R-1 Residential District (conditional zoning) is granted for the certain real property situated at South Kihei Road, Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:141, more particularly described in Exhibit "A," and subject to the conditions established in Exhibit "B," both of which are attached and incorporated into this ordinance.

SECTION 2. In accordance with Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the Unilateral Agreement and Declaration of Conditional Zoning, which is attached and incorporated into this ordinance as Exhibit "C."

SECTION 3. This ordinance takes effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:

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Department of the Corporation Counsel  
County of Maui

pslu:misc:056abill02a:alkl

## EXHIBIT "A"

All of that certain parcel of land (being all of the land(s) described in and covered by Land Patent Grant Number S-15,636 issued to Seibu Hawaii, Inc., a Hawaii corporation) situate, lying and being at Kamaole, Wailuku (Kula), Island and County of Maui, State of Hawaii, being PARCEL 7, same being a portion of the government land of Kamaole and thus bounded and described:

Beginning at the southwest corner of this parcel of land, the northwest corner of Grant A-14699 to Robert H. and Nadine Hughes and on the east side of Kihei Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POU-O-KALI" being 9982.31 feet south and 19,955.43 feet west, thence running by azimuths measured clockwise from true South:

1. Along the east side of Kihei Road on a curve to the right with a radius of 1879.86 feet, the chord azimuth and distance being: 172° 38' 25" 80.47 feet;
2. 265° 23' 100.00 feet along Sewerage Pump Station No. 8;
3. 175° 23' 99.51 feet along Sewerage Pump Station No. 8;
4. 85° 23' 100.00 feet along Sewerage Pump Station No. 8;
5. Thence along the east side of Kihei Road on a curve to the right with a radius of 1879.86 feet, the chord azimuth and distance being: 180° 00' 30" 203.87 feet;
6. 183° 07' 696.26 feet along the east side of Kihei Road;
7. Thence along the remainder of Government Land of Kamaole on a curve to the right with a radius of 20.00 feet, the chord azimuth and distance being: 215° 00' 21.13 feet;
8. 246° 53' 197.85 feet along remainder of the Government Land of Kamaole;
9. 354° 54' 1292.80 feet along Grant 5008 to Henry Waterhouse Trust Co., Ltd.;

- |     |      |     |        |  |
|-----|------|-----|--------|--|
| 10. | 65°  | 52' | 63.47  | feet along Grant 548 to J. Y. Kanehoa;   |
| 11. | 174° | 54' | 164.06 | feet along Grant 10297 to H. F. Rice;  |
| 12. | 84°  | 54' | 257.09 | feet along Grant 10297 to H. F. Rice and Grant S-14699 to Robert H. and Nadine Hughes to the point of beginning and containing an area of 6.943 acres, more or less. |

**BEING THE PREMISES ACQUIRED BY WARRANTY DEED**

**GRANTOR** : SEIBU HAWAII, INC., a Hawaii corporation

**GRANTEE** : GEORGE F. FERREIRA, JR. and ELEANOR B. FERREIRA, husband and wife, as Tenants by the Entirety

**DATED** : September 6, 1990

**RECORDED** : Document No. 90-139471

**SUBJECT, HOWEVER, to the following:**

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

**INSTRUMENT : LAND PATENT GRANT NUMBER S-15,636**

The foregoing includes, but is not limited to, matters relating to reservation in favor of State of Hawaii of all minerals, surface and ground waters and prehistoric and historic remains

3. Perpetual non-exclusive access and utility easements as shown on plan attached to Land Patent Grant Number S-15,636.

4. Reserving to the State of Hawaii, its successors and assigns, perpetual non-exclusive access and utility easements as shown on plan attached to Land Patent Grant Number S-15,636.

5. GRANT

TO : JEROME S. KATZIN, as Trustee of Tower Development Corporation Liquidating Trust

DATED : January 14, 1988

RECORDED : Liber 21527 Page 650

GRANTING : a perpetual and non-exclusive easement in, over, under and across that certain parcel of land, being more particularly described as follows:

PERPETUAL NON-EXCLUSIVE ACCESS AND UTILITY EASEMENT  
Kamaole, Wailuku (Kula), Maui, Hawaii

Being a portion of Government Land of Kamaole.

Beginning at the northwest corner of this easement and on the east side of South Kihei Road, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POU O KALI" being 8,792.90 feet south and 19,929.79 feet west, thence running by azimuths measured clockwise from true South:

1. Along the remainder of the Government Land of Kamaole, on a curve to the left with a radius of 20.00 feet, the chord azimuth and distance being:  

305° 00'	33.96	feet;
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2. 246° 53' 168.09 feet along the remainder of the Government Land of Kamaole;
3. 354° 54' 503.09 feet along Grant 5008 to Henry Waterhouse Trust Company, Limited;
4. 84° 54' 44.00 feet along the remainder of the Government Land of Kamaole;
5. 174° 54' 384.39 feet along the remainder of the Government land of Kamaole;

6. Thence along the remainder of the Government Land of Kamaole, on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being;

120° 53' 30" 48.55 feet;

7. 66° 53' 110.28 feet along the remainder of the Government Land of Kamaole;

8. Thence along the remainder of the Government Land of Kamaole, on a curve to the left with a radius of 20.0 feet, the chord azimuth and distance being;

35° 00' 21.13 feet;

9. 183° 07' 111.48 feet along the east side of South Kihei Road to the point of beginning and containing an area of 32,016 square feet, more or less.

**ABOVE GRANT BY MESNE ASSIGNMENTS WAS ASSIGNED**

TO : KILOHANA MAUKA ASSOCIATION, INC., a Hawaii non-profit corporation  
DATED : January 9, 2003  
RECORDED : as Document No. 2003-228679  
CONSENT : Given by the STATE OF HAWAII, by its Board of land and Natural Resources, by instrument dated October 16, 2003, recorded as Document No. 2003-228680

**6. GRANT**

TO : WAILEA IKI SUBDIVISION PARTNERSHIP, a Hawaii Limited Partnership  
DATED : July 14, 1993  
RECORDED : Document No. 93-136165  
GRANTING : non-exclusive and perpetual easement for access and utility purposes, in, over, under and across Part B, being more particularly described as follows:

Being a portion of Grant S-15636 to Seibu Hawaii, Inc.

Being also portion of the perpetual non-exclusive access and utility easement and on the west boundary of Grant 5008 to Henry Waterhouse Trust Company, Limited, the coordinates of said point of beginning referred to Government Survey Triangulation Station "POU O KALI" BEING 8,809.23 feet south and 19,741.77 feet west, thence running by azimuths measured clockwise from true South:

1. 354° 54' 191.09 feet along Grant 5008 to Henry Waterhouse Trust Company, Limited;
2. 84° 54' 44.00 feet along the remainder of Grant S-15636 to Seibu Hawaii, Inc.;
3. 174° 54' 135.48 feet along the remainder of Grant S-15636 to Seibu Hawaii, Inc.;
4. Thence along the remainder of Grant S-15636 to Seibu Hawaii, Inc., on a curve to the left with a radius of 30.00 feet, the chord azimuth and distance being;  
120° 53' 30" 48.55 feet;
5. 246° 53' 87.57 feet along the Government Land of Kamaole to the point of beginning and containing an area of 8,484 square feet, more or less.

**ABOVE GRANT WAS MESNE ASSIGNMENTS ASSIGNED**

TO : KEAWAKAPU VIEWS COMMUNITY ASSOCIATION, a Hawaii non-profit corporation

DATED : November 1, 1994

RECORDED : Document No. 95-088722

CONSENT : Given by the STATE OF HAWAII, by its Board of Land and Natural Resources, by instrument dated March 31, 1995

7. Pending Civil No. 98-0863 filed in the Circuit Court of the Second Circuit, State of Hawaii; COUNTY OF MAUI, by and through its Director of Finance, "Plaintiff", vs. GEORGE P. FERREIRA, JR. and ELEANOR B. FERREIRA, ET AL, "Defendant"; re: Foreclosure.

8. GRANT

TO : TONNE BROWN LLC, a Hawaii limited liability company  
DATED : July 16, 2001  
RECORDED : Document No. 2001-122656  
GRANTING : an easement for roadway and utility purposes

ABOVE GRANT AMENDED BY INSTRUMENT

DATED : May 10, 2002  
RECORDED : Document No. 2002-088790  
RE : description of easements

ABOVE GRANT AMENDED BY INSTRUMENT

DATED : March 26, 2003  
RECORDED : Document No. 2003-066248  
RE : adding to the Roadway Easement area

9. GRANT

TO : MAUI ELECTRIC COMPANY, LIMITED and VERIZON HAWAII INC.  
DATED : March 18, 2003  
RECORDED : Document No. 2003-088355  
GRANTING : an easement for utility purposes

10. The terms and provisions, including the failure to comply with any covenants, conditions and reservations, contained in the following:

INSTRUMENT : WATERLINE EASEMENT AGREEMENT

DATED : June 17, 2003  
RECORDED : Document No. 2003-137108  
PARTIES : TONNE BROWN LLC, a Hawaii limited liability company and COUNTY OF MAUI



11. Any lien (or claim of lien) for services, labor or material arising from an improvement or work related to the land described herein.

(Note: The death of George P. Ferreira, Jr. on November 6, 2000 at Wailuku, Maui, Hawaii)

**END OF EXHIBIT "A"**

## **EXHIBIT "B"**

### **CONDITIONS OF ZONING**

1. Ferreira Family Partners, L.P. must develop the property to include only residential workforce housing units and no other dwelling units.
2. Ferreira Family Partners, L.P. must ensure each unit on the property is owner-occupied for a period of 20 years from the date of the unit's initial purchase date.
3. Ferreira Family Partners, L.P. must ensure that all units in the project are only used for long-term residential use.
4. Ferreira Family Partners, L.P. may not allow the conversion of the project or any unit into a condominium or further subdivision of any lot.
5. Ferreira Family Partners, L.P. may not allow accessory dwelling units.
6. Ferreira Family Partners, L.P. must maintain Lot 14, approximately 7,900 square feet, as identified on the Conceptual Subdivision Plan below, for open space or park use.
7. Ferreira Family Partners, L.P. may not place any restriction on homebuyers in their choice of lenders or in the pre-qualification process.
8. To minimize the need for lengthy commutes and promote smart-growth development and jobs-housing balance, Ferreira Family Partners, L.P. may give homebuyer preference to applicants employed or residing in the Kihei-Makena Community Plan Area.
9. To lessen the traffic burden on Wela Street caused by the project, Ferreira Family Partners, L.P. must provide a second ingress and egress to and from the project by extending Wela Street to Kilohana Drive which complies with the intersection improvements requirements as approved by the Department of Public Works. Ferreira Family Partners, L.P. must construct the second ingress and egress prior to final building permit inspection approval by the Department of Public Works for the first unit of the project.
10. Ferreira Family Partners, L.P. must comply with all applicable laws in developing and managing the project.

11. Ferreira Family Partners, L.P. must develop and manage the project in substantial compliance with all representations made to the Council and its Planning and Sustainable Land Use Committee to obtain this Change in Zoning.
12. Ferreira Family Partners, L.P. must construct one or more publicly accessible footpaths, at least four feet wide, connecting the project with the surrounding neighborhood. Ferreira Family Partners, L.P. must inform the Department of Planning, prior to final subdivision approval, of the footpaths' precise location. Ferreira Family Partners, L.P. must construct the footpaths prior to final building permit inspection approval by the Department of Public Works for the first unit of the project.
13. Ferreira Family Partners, L.P. must inform the Department of Planning, prior to final subdivision approval, of the location of fencing and landscaping around the project to maintain residents' privacy and security. Ferreira Family Partners, L.P. must install the fencing and landscaping prior to final building permit inspection approval by the Department of Public Works for the first unit of the project.
14. Ferreira Family Partners, L.P. must ensure a homeowners' association is established in accordance with Chapter 421J, Hawaii Revised Statutes.
15. Ferreira Family Partners, L.P. must construct a rough-in for a future photovoltaic system prior to final building permit inspection approval by the Department of Public Works for each unit of the project.
16. Ferreira Family Partners, L.P. must comply with Chapter 2.96, Maui County Code, except that the 90-day initial sales period in Section 2.96.090(D)(4), Maui County Code, is extended to 180 days.

