

REQUEST FOR LEGAL SERVICES

Date: October 27, 2021
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie M. Chen, Esq.

Subject: DIGITAL ZONING MAP (3) FOR MAUI (PSLU-36)

Background Data: Please see attached revised bill with Exhibit "A" (Ordinance 5111), and if appropriate, approve it as to form and legality. Please review the revised and unsigned Unilateral Agreement and determine if it can be approved as to form and legality once signed and notarized by the applicant. If revisions are required, please email a Word document with track changes. Please submit your response to pslu.committee@mauicounty.us.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Tamara Paltin	Contact Person <u>Wilton Leauanae</u> (Telephone Extension: <u>7761</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): October 28, 2021
REASON: To meet posting deadline for Council meeting on November 5, 2021.

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)

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING SECTION 19.06.020, MAUI COUNTY CODE, ADOPTING DIGITAL ZONING MAP (3) AS THE OFFICIAL ZONING MAP FOR THE ISLAND OF MAUI

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

SECTION 1. The purpose of this Ordinance is to adopt the digital zoning map (3), as amended, as the official zoning map for the Island of Maui. The map provides a graphical portrayal of zoning designations established by ordinance.

SECTION 2. Section 19.06.020, Maui County Code, is amended to read as follows:

“19.06.020 Maps. A. In accordance with [section 8-8.3(6)] subsection 8-8.3.6 of the revised charter of the County of Maui (1983), as amended, the planning director must prepare and administer the County’s zoning maps.

B. For the islands of Maui and [Lana‘i] Lāna‘i, one zoning map for each island must be prepared and administered in a digital format, such as within a geographic information system and made available for public use on the County website. The digital zoning maps are incorporated by reference and are located online at the department of planning, implementation division’s website at <https://www.mauicounty.gov/2159/Digital-Zoning-Map-Update-Project>. The most recently adopted digital maps on file, Maui digital zoning map [(2),] (3), as amended, and [Lana‘i] Lāna‘i digital zoning map (1), are in addition to any original “land zoning maps” on file in the office of the county clerk; however, the digital zoning maps must be used to determine zoning boundaries and designations in the event of a conflict. Whenever a change in zoning is approved and the ordinance is filed with the county

clerk, the island's digital zoning map must be amended to reflect the change in zoning.

C. The areas of the islands of Kaho'olawe and Moloka'i shown on original maps entitled "Land Zoning Maps," on file in the office of the county clerk with certified copies being placed on file in the planning department, and the digital zoning maps for the islands of Maui and [Lana'i] Lāna'i, together with all explanatory materials, are part of this title."

SECTION 3. The zoning conditions in Ordinance 5111 (Exhibit "A") remain in full effect unless repealed by a separate zoning ordinance.

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

pslu:misc:036abill01:wal

EXHIBIT "A"

ORDINANCE NO. 5111

BILL NO. 81 (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 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 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:

/s/ Michael J. Hopper

MICHAEL J. HOPPER

Department of the Corporation Counsel
County of Maui

2020-1165

PAF 20-215 2020-08-07 Ord Paia Courtyard CIZ

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.

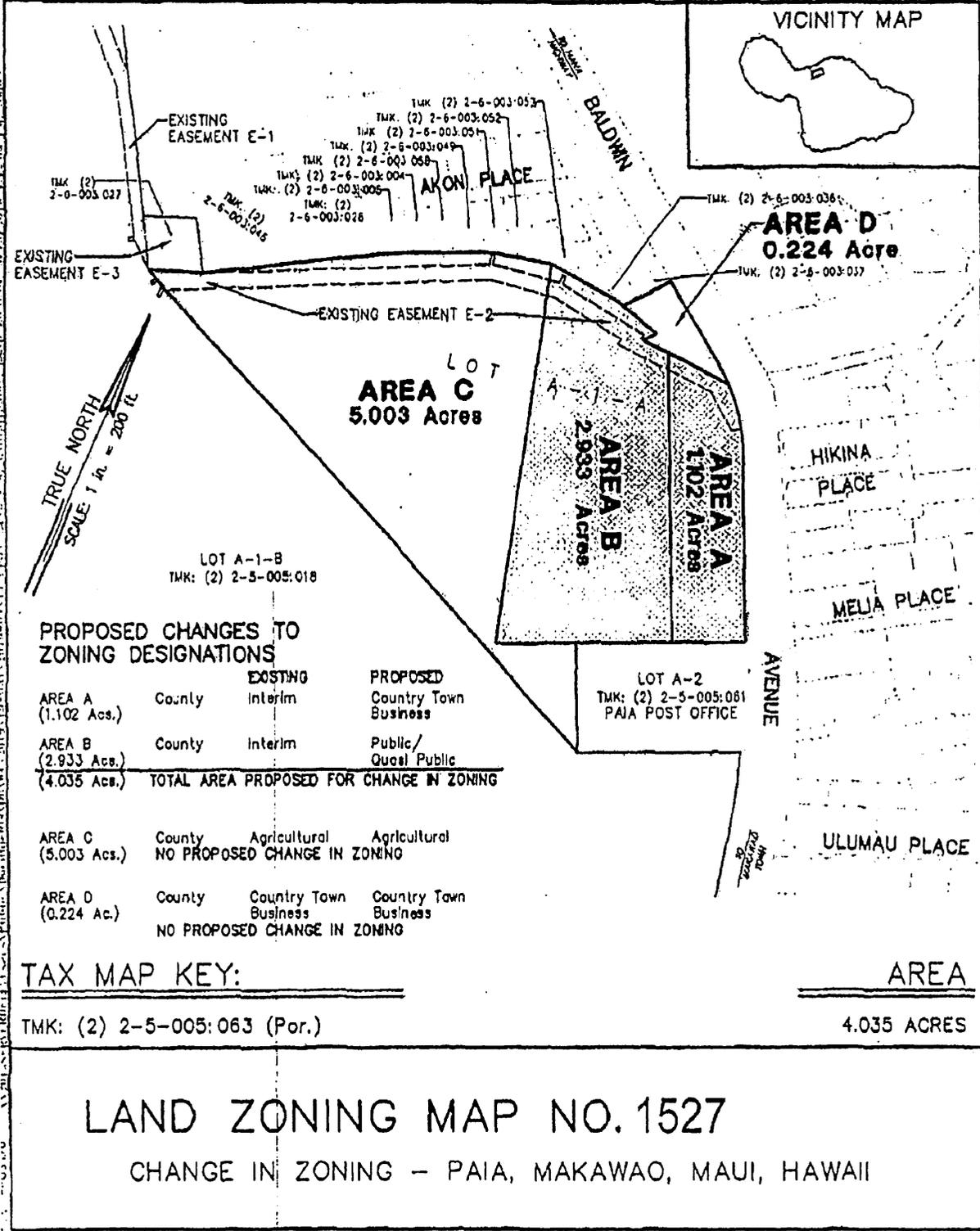
EXHIBIT "/"

AREA B
LOT A-1-A
PAIA POST OFFICE SUBDIVISION
A' HAMAKUAPOKO AND HALIIMAILI, 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"



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 dedicate the property designated as "Area B" in Exhibit "3" to the County of Maui at no cost to the County with a two-lane vehicular access easement through "Area A" to Baldwin Avenue; except 30,000 square feet of "Area B" located along the border of "Area A" in Exhibit "3" can be retained by Paia 2020, LLC and the David R. Spee Revocable Trust. Paia 2020, LLC and the David R. Spee Revocable Trust must not allow the retained portion to impede vehicular ingress and egress to "Area B" from Baldwin Avenue, as determined by the Director of Public Works
2. Paia 2020, LLC and the David R. Spee Revocable Trust must develop "Area A" and the retained portion of "Area B" in Exhibit "3" 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" and the retained portion of "Area B" 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.

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

DOCUMENT NO. _ Doc A - 75290522

DATE - TIME _ August 12, 2020 3:29 PM

LAND COURT SYSTEM

REGULAR SYSTEM

Return By Mail (X) 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)

Affects Tax Map Key (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 31st 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 Conditional 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: *DIRA*

Title of signer: *Manager*

STATE OF *Hawaii*)
County of Maui) SS.

On this *3rd* day of *July*, 20*20*, 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.

[Signature]

Notary Public, State of *HAWAII*

Print Name: *Gerena L. Freitas*

My Commission Expires: *9.28.2023*

pages 10

25 [Stamp or Seal]

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

David R. Spee Revocable Trust

Name of signer: DRS

Title of signer: TRUSTEE

STATE OF HAWAII)
County of Maui)) SS.

On this 31st 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.

[Signature]
Notary Public, State of HAWAII

LS [Stamp or Seal]

Print Name: Serena L Freitas

My Commission Expires: 9.8.2023

NOTARY PUBLIC CERTIFICATION

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

Notary Name: Serena L Freitas Judicial Circuit: 2nd

Document Description: Unilateral Agreement and Declaration for Conditional Filing

Notary Signature: [Signature] [Stamp or Seal] LS

Date: 7/31/2020

APPROVED AS TO FORM AND LEGALITY:



M 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,
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:

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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.

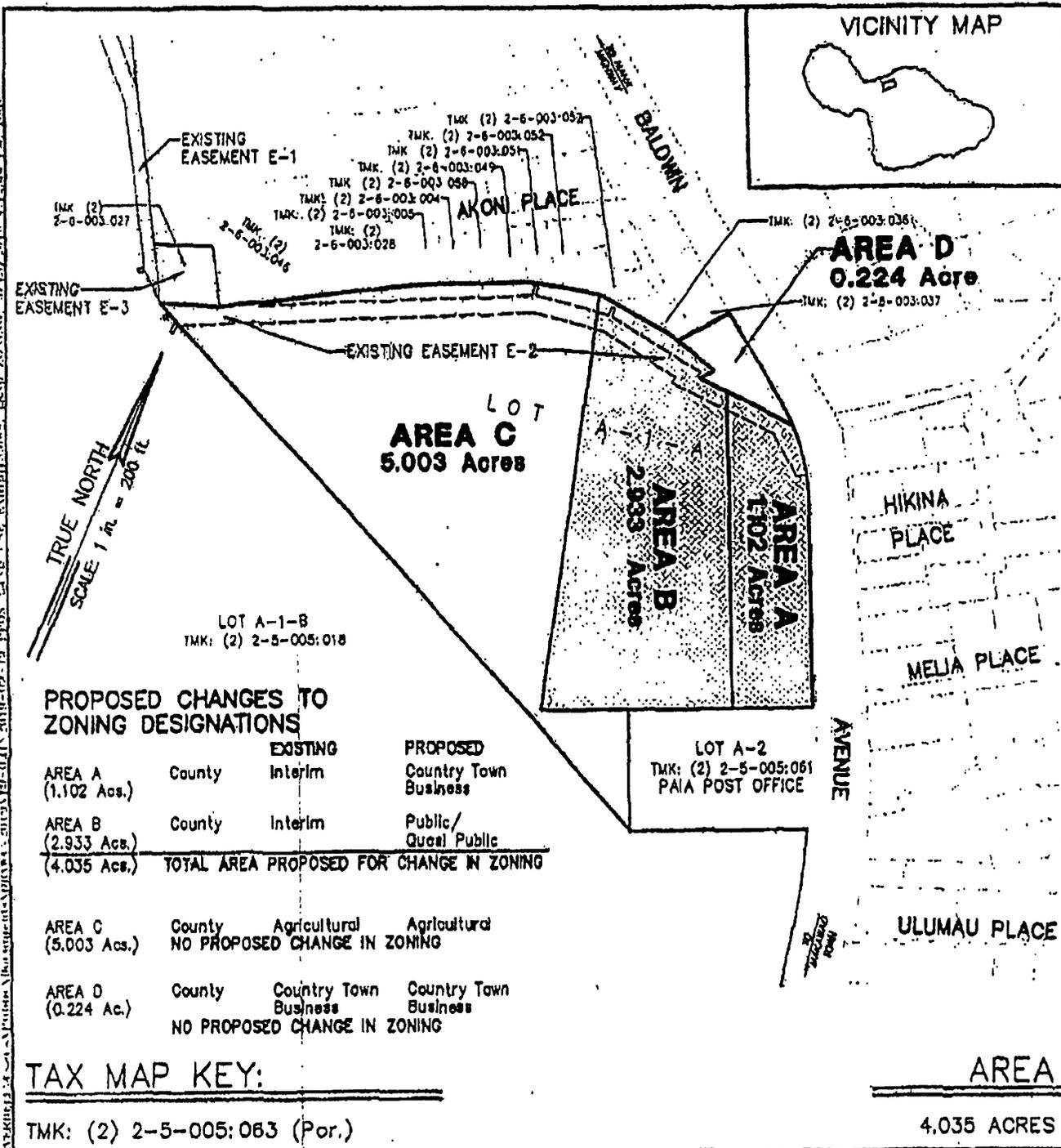
EXHIBIT "/>

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"



PROPOSED CHANGES TO ZONING DESIGNATIONS

	EXISTING	PROPOSED
AREA A (1.102 Acs.)	County Interim	Country Town Business
AREA B (2.933 Acs.)	County Interim	Public/Quasi Public
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 Business	Country Town 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 dedicate the property designated as "Area B" in Exhibit "3" to the County of Maui at no cost to the County with a two-lane vehicular access easement through "Area A" to Baldwin Avenue; except 30,000 square feet of "Area B" located along the border of "Area A" in Exhibit "3" can be retained by Paia 2020, LLC and the David R. Spee Revocable Trust. Paia 2020, LLC and the David R. Spee Revocable Trust must not allow the retained portion to impede vehicular ingress and egress to "Area B" from Baldwin Avenue, as determined by the Director of Public Works.

2. Paia 2020, LLC and the David R. Spee Revocable Trust must develop "Area A" and the retained portion of "Area B" in Exhibit "3" 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" and the retained portion of "Area B" 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.

WE HEREBY CERTIFY that the foregoing BILL NO. 81 (2020)

1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 18th day of August, 2020, by the following vote:

Alice L. LEE Chair	Keani N. W. RAWLINS-FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 19th day of August, 2020.

DATED AT WAILUKU, MAUI, HAWAII, this 19th day of August, 2020.

RECEIVED
2020 AUG 19 AM 9:58
OFFICE OF THE MAYOR

ALICE L. LEE, CHAIR
Council of the County of Maui

KATHY L. KAOHU, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 20 DAY OF August, 2020.

MICHAEL P. VICTORINO, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 5111 of the County of Maui, State of Hawaii.

KATHY L. KAOHU, COUNTY CLERK
County of Maui

Passed First Reading on July 24, 2020
Effective date of Ordinance August 20, 2020

RECEIVED
2020 AUG 24 AM 10:04
OFFICE OF THE COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 5111, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

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: _____
(including exhibits, notary certification pages, and all other components)

Affects Tax Map Key (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 _____ day of _____, 2021, 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 P-1 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.

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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: _____

Title of signer: _____

STATE OF _____)
_____) SS.

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

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

[Stamp or Seal]

Notary Public, State of _____

Print Name: _____

My Commission Expires: _____

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APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

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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,

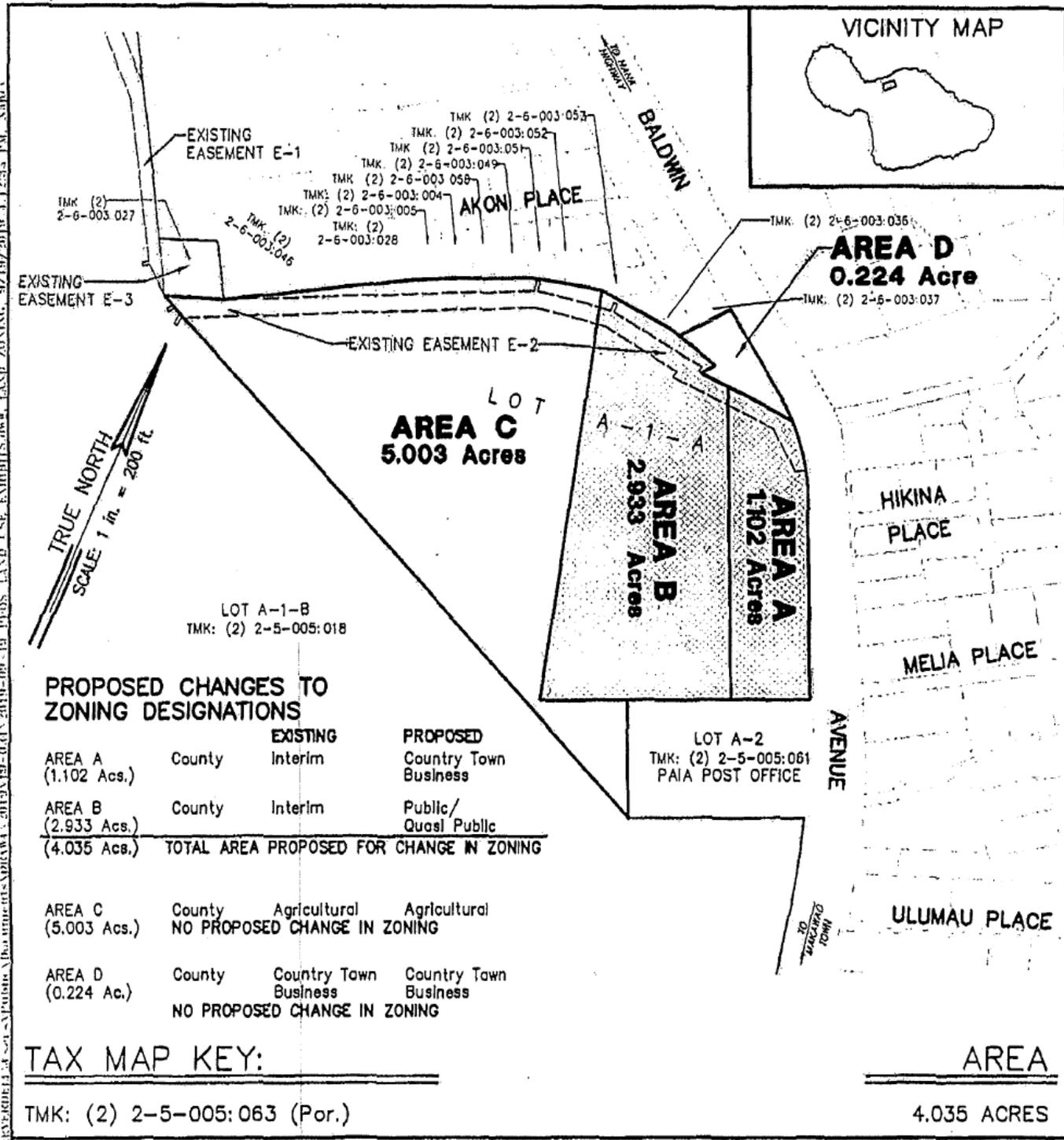
DATED: JANUARY 30, 1860 RECORDED IN LIBER 12,

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"



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 dedicate the property designated as “Area B” in Exhibit “3” to the County of Maui at no cost to the County with a two-lane vehicular access easement through “Area A” to Baldwin Avenue; except 30,000 square feet of “Area B” located along the border of “Area A” in Exhibit “3” can be retained by Paia 2020, LLC and the David R. Spee Revocable Trust. Paia 2020, LLC and the David R. Spee Revocable Trust must not allow the retained portion to impede vehicular ingress and egress to “Area B” from Baldwin Avenue, as determined by the Director of Public Works.
2. Paia 2020, LLC and the David R. Spee Revocable Trust must develop “Area A” and the retained portion of “Area B” in Exhibit “3” 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” and the retained portion of “Area B” 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.