

REQUEST FOR LEGAL SERVICES

Date: November 9, 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 the First Amendment to the Unilateral Agreement signed by the applicant and notarized. Please determine if it can be approved as to form and legality. If revisions are required, please email a Word document with track changes. Please submit your response to pslu.committee@mauicounty.us.

Work Requested: ☒ [X] 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)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 10, 2021
REASON: To meet posting deadline for November 19, 2021 Council meeting.

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)

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 DATED JULY 31, 2020

TOTAL NUMBER OF PAGES 4

Affects Tax Map Key(Maui) (2) 2-5-005:063 (POR.)

**FIRST AMENDMENT TO UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING DATED JULY 31, 2020**

3rd Unilateral Agreement" or "Declaration" dated July 31, 2020, is made this day of November, 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 Richard Spee, Trustee for the David R. Spee Revocable Trust dated NOVEMBER 16, 2009

WITNESSETH:

WHEREAS, the Declarants entered into a Unilateral Agreement dated July 31, 2020; and

WHEREAS, the Unilateral Agreement dated July 31, 2020 shall be hereinafter referred to as the "Unilateral Agreement" or "Declaration"; and

WHEREAS, the Unilateral Agreement is on file with the Office of the County Clerk; and

WHEREAS, the Declarants now desire to amend the Unilateral Agreement; and

NOW, THEREFORE, the Declarants agree to amend the Unilateral Agreement as follows:

1. Section 5 is amended to read as follows:

5. That this Unilateral Agreement 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 P-1 Public/Quasi-Public for Area "B";

2. This First Amendment to the Unilateral Agreement 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 First Amendment to the Unilateral Agreement.

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

[Execution Pages to Follow]

[Remainder of Page Left Intentionally Blank]

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed on the day and year first written above.

DECLARANTS:

Paia 2020, LLC



By: David R. Spee

Its Manager

David R. Spee Revocable Trust



By David Richard Spee
Its Trustee

APPROVED AS TO FORM
AND LEGALITY:

STEPHANIE M. CHEN
Deputy Corporation Counsel
County of Maui

STATE OF Hawaii

County of Maui

SS.

On this 3rd day of November, 2021, before me personally appeared David B. Speer, Manager of Pula 2020, LLC, 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

[Stamp or Seal]

16 SERENA L. FREITAS
Notary Public - State of Hawaii
Commission No. 03-554
My Commission Expires Sept. 28, 2023

NOTARY PUBLIC CERTIFICATION

Doc. Date: 11/3/2021 # Pages: 6

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

Document Description: First Amendment to Unilateral Agreement and Declaration for Conditional Zoning dated July 31, 2020

Notary Signature: 

Date: 11/3/2021

[Stamp or Seal]

16 SERENA L. FREITAS
Notary Public - State of Hawaii
Commission No. 03-554
My Commission Expires Sept. 28, 2023

STATE OF Hawaii)
County of Maui) SS.

On this 3rd day of November, 2021, before me personally appeared David Richard Spivey, 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]
SERENA L. FREITAS
Notary Public - State of Hawaii
Commission No. 03-554
My Commission Expires Sept. 28, 2023

[Signature]
Notary Public, State of Hawaii

Print Name: Serena L. Freitas

My Commission Expires: 9.28.2023

NOTARY PUBLIC CERTIFICATION

Doc. Date: 11/3/2021 # Pages: 6

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

Document Description: First Amendment

to Unilateral Agreement and Declaration
for Conditional Termination dated July 31, 2020

Notary Signature: [Signature]

Date: 11/3/2021

[Stamp or Seal]

L. SERENA L. FREITAS
Notary Public - State of Hawaii
Commission No. 03-554
My Commission Expires Sept. 28, 2023