

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

September 15, 2000

Committee
Report No.

00-181

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawai'i

Chair and Members:

Your Land Use Committee, having met on August 28, 2000, makes reference to County Communication No. 97-137, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO ADOPT A LAND ZONING MAP FOR THE URBAN DISTRICT OF PAIA".

The purpose of the proposed bill is to change the zoning of all parcels with Interim District zoning in the State Urban District of the Pa`ia and Kuau areas.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO ADOPT A LAND ZONING MAP FOR THE URBAN DISTRICT OF HAIKU".

The purpose of the proposed bill is to change the zoning of all parcels with Interim District zoning in the State Urban District of the Pauwela and Ha`iku areas.

3. Other related documents.

Both proposed bills seek to establish the appropriate zoning for virtually all Interim-zoned urban parcels in the Pa`ia-Ha`iku Community Plan region, based on the parcels' current uses and their designations in the Community Plan, which was adopted by the County in 1995. Parcels for which no appropriate zoning district exists, or parcels that should undergo specific public review, would be placed in the Urban Reserve District.

Your Committee notes that the Maui Planning Commission held a public hearing on the proposed bills on December 9, 1996. At the hearing, two people testified in favor of the proposed bills and two people expressed general concerns over specific parcels.

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Your Committee further notes that at its special meeting of December 9, 1996, the Maui Planning Commission reviewed the findings presented in the document entitled "PLANNING DIRECTOR'S REPORT AND RECOMMENDATION November 9, 1996 [sic]" and voted to recommend approval of the proposed bills with one amendment relating to the "lime kiln" site in Pa`ia. Because one of the Planning Commissioners expressed a conflict of interest with the "lime kiln" site in Pa`ia identified as TMK: 2-5-5:14 and 16, and because there were only five Commissioners present, the Commission made no recommendation for the subject property. Your Committee notes that the Department of Planning recommends that TMK: 2-5-5:14 and 16 be granted Urban Reserve and PK-2 Community Park District zoning, respectively.

Your Committee further notes that County Communication No. 97-137 was referred to the prior Council's Land Use Committee at the Council meeting of March 21, 1997.

The Committee previously reported on the matter through Committee Report No. 97-232, which recommended that a proposed bill to establish B-CT Country Town Business District zoning for approximately 50 commercial properties in Pa`ia and Kuau pass first reading. Your Committee notes that Committee Report No. 97-232 was adopted at the Council meeting of November 7, 1997, thus designating the proposed zoning bill as Bill No. 70 (1997), which was subsequently designated as Ordinance No. 2605 upon its approval by the Mayor.

The Committee also previously reported on the matter through Committee Report No. 97-255, which recommended that a proposed bill to establish B-CT Country Town Business District zoning for five commercial properties in Ha`iku pass first reading. Your Committee notes that Committee Report No. 97-255 was adopted at the Council meeting of December 1, 1997, thus designating the proposed zoning bill as Bill No. 80 (1997), which was subsequently designated as Ordinance No. 2616 upon its approval by the Mayor.

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The Committee also previously reported on the matter through Committee Report No. 98-129, which recommended that a proposed bill to establish conditional B-CT Country Town Business District zoning for the property occupied by Mama's Fish House "upper" parking lot pass first reading. Your Committee notes that Committee Report No. 98-129 was adopted at the Council meeting of August 7, 1998, thus designating the proposed conditional zoning bill as Bill No. 61 (1998), which was subsequently designated as Ordinance No. 2750 upon its approval by the Mayor.

The Committee also previously reported on the matter through Committee Report No. 98-175, which recommended that six proposed zoning bills pass first reading and be ordered to print. Committee Report No. 98-175 was adopted at the Council meeting of October 16, 1998, thus designating the proposed zoning bills as Bill Nos. 86 (1998), 87 (1998), 88 (1998), 89 (1998), 90 (1998) and 91 (1998), which were subsequently designated as Ordinance Nos. 2711, 2712, 2713, 2714, 2715 and 2716 respectively, upon their approval by the Mayor.

Ordinance No. 2711 established R-1 Residential District zoning for approximately 200 residential parcels in Pa`ia, virtually all of which are 12,000 square feet or smaller and which, therefore, are in most cases, too small to be subdivided. Ordinance No. 2712 established A-2 Apartment District zoning for the property occupied by the Kuau Plaza apartment building. Ordinance No. 2713 established P-1 Public/Quasi-Public District zoning for approximately 20 parcels in Pa`ia and Ha`iku that are in existing public/quasi-public use, such as churches, community centers and schools. Ordinance Nos. 2714 and 2715 established PK-1 Neighborhood Park and PK-2 Community Park District zoning, respectively, for five parcels in Pa`ia and Ha`iku that are in existing park use. Ordinance No. 2716 established B-CT Country Town Business District zoning for three parcels in Ha`iku, based upon testimony from the property owners in support of the proposed zoning.

Your Committee notes that the Committee did not make recommendations on larger residential parcels, due to the subdivision potential that could be created by the proposed zoning. The Committee also did not make recommendations on parcels that have been recommended for zonings that do not recognize existing use, due to concern that the owners of these parcels may not be aware of the implications of the proposed zoning.

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By letter dated September 1, 1998, the Planning Director responded to a previous question concerning the "split-designation" of TMK No. 2-6-04:14, a parcel in Pa`ia town that is designated as Business/Commercial and Single-Family in the Pa`ia-Ha`iku Community Plan and that was partially zoned by Ordinance No. 2605.

By memorandum dated September 2, 1998, the Council Chair transmitted a facsimile memorandum dated September 1, 1998, from Randy Piltz, regarding the A-2 Apartment District zoning that was established for Kuau Plaza.

By letter dated September 16, 1998, the Planning Director requested the Committee's comments on draft letters notifying the property owners affected by Ordinance Nos. 2707 through 2710 of proposed zoning changes.

By memorandum dated September 21, 1998, the Chair of the Committee circulated the Planning Director's draft letters and requested comments.

By letter dated October 5, 1998, the Planning Director was asked for additional clarification relating to the zoning of TMK No. 2-6-04:14.

By letter dated October 22, 1998, the Planning Director provided a detailed description of the split-designated and zoned areas of TMK No. 2-6-04:14.

At its meeting of December 1, 1998, the Committee agreed to recommend that County Communication No. 97-137 be referred to the Council Chair for the term beginning January 2, 1999, for a recommendation as to referral or other disposition.

At its meeting of January 11, 1999, the Council referred County Communication No. 97-137 to your Land Use Committee (County Communication No. 99-11).

By memorandum dated January 20, 1999, the Council Chair transmitted a letter dated January 7, 1999, from Douglas J. Sameshima, requesting that the Comprehensive Zoning bill be passed.

By letter dated September 21, 1999, your Committee Chair requested clarification from the Planning Director on the area and zoning on TMK No. (2) 2-6-005:004.

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By memorandum dated September 21, 1999, the Chair of your Committee provided background information on the comprehensive zoning for the Upcountry area, Pa`ia and Ha`iku.

By letter dated October 4, 1999, the Planning Director informed your Committee that TMK No. (2) 2-6-005:004 was only partially zoned with the passage of Ordinance No. 1337.

By memorandum dated March 23, 2000, the Council Chair transmitted a facsimile letter dated March 22, 2000, from Trudy Spanier, requesting that an emergency meeting be held to address rezoning of the Urban Interim zoned areas of Maui.

By memorandum dated April 12, 2000, the Council Chair transmitted a letter dated April 11, 2000, from the Mayor, requesting that your Committee schedule a meeting relating to the issuance of a building permit for the Sprint PCS Antenna.

By memorandum dated April 19, 2000, the Council Chair transmitted a letter dated April 17, 2000, from the Mayor, recommending that your Committee pursue this item.

By letter dated August 25, 2000, Kent R. Smith requested the establishment of R-0, zero lot line residential district zoning for three parcels in Pa`ia.

By memorandum dated August 25, 2000, Councilmember Tavares transmitted a copy of a letter dated August 24, 2000, from Jeff Stark of Creative Environmental Communication, expressing his support for the request by Smith Development Company.

By facsimile transmittals dated August 28, 2000, Ben Walin provided comments on the proposed comprehensive zoning; Valerie Lewis, Mr. and Mrs. William F. Palmer, and Dan Cohen opposed the proposed comprehensive zoning; and Pamela Hoopii supported the proposed comprehensive zoning.

At its meeting, your Committee met with the Planning Director, a Planner from the Department of Planning, and a Deputy Corporation Counsel.

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Your Committee Chair provided a brief introduction on the item. He noted that his recommendation would be to allow passage of the proposed bills provided additional language is inserted, similar to the language contained in the Maui County Code, Section 19.30A.110, that would allow for the continuation of existing special use permits, conditional permits and variances as well as the reconstruction of existing structures. He also recommended that the amended bills pass first reading and that the Administration be allowed one year to submit corrections due to technical errors such as transposed tax map key numbers.

The Planner provided a brief overview. He discussed the reasons for different zoning categories and explained the reasons for the Department of Planning's zoning recommendations. He provided your Committee with colored land zoning maps for Pa`ia and Haiku. The Planner also noted that this item was previously discussed on numerous occasions and that the property owners had been informed of the possibility of land use changes affecting their parcels.

Your Committee heard testimony from five people in support of the proposed comprehensive zoning. Six people testified in opposition to the proposal and one person requested R-0 zoning for three parcels. Three of these testifiers also provided written comments. One person submitted written testimony in opposition to the proposed comprehensive zoning but did not testify orally. Attorney Isaac Hall submitted a written request to establish B-CT zoning for a portion of the Mama's Fish House parking lot due to an inconsistency created by the State's reconsideration of a boundary interpretation for the State Urban District.

Your Committee discussed the possibility of inserting language into the proposed bills as suggested by the Chair of your Committee. The Deputy Corporation Counsel acknowledged that such language could be inserted into the proposed bills; however, she was concerned that personnel dealing with such matters may not realize such language exists if the bills are not codified. She also indicated she would not be willing to sign off on bills where known errors were present. She expressed a preference that the corrections be made before first reading.

The Deputy Corporation Counsel confirmed that legal notice of the meeting had been fulfilled and that in passing legislation, it is important to consider the desires of the people. She noted that there is a need to move away from Interim Zoning. Although Interim Zoning provides for certain uses, it was not intended to be a permanent zoning category.

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Your Committee discussed the possible tax consequences of zoning property noting that homeowners receive the lowest tax rate.

The Planner provided a detailed description of the proposed changes using large colored maps for the areas of Pa`ia and Ha`iku.

After due deliberation, your Committee agreed to recommend passage of the proposed bills with added verbage similar to that contained in Section 19.30A.110 of the Maui County Code, allowing for the continuation of existing special use permits, conditional permits, and variances, and the reconstruction of dwellings or structures, and the filing of County Communication No. 97-137.

Your Committee also agreed to recommend the changes in zoning as proposed by the Department of Planning with the following exceptions. For the parcels in the Ha`iku to Pauwela area earmarked for B-CT zoning, your Committee expressed a desire to see the proposed B-CT parcels zoned Urban Reserve except for the driveway parcel behind the Ha`iku Post Office. The Planner noted that the parcels on the proposed map marked PK-1 should have been marked PK-2. The Planner also noted that the Pa`ia Mill property that is marked M-2 on the proposed map should have been colored. Rather than the recommended R-3 zoning, your Committee agreed to recommend R-1 zoning for the residential parcels in Kuau.

Your Committee decided not to grant Mr. Smith's request for R-0, zero lot line residential district zoning for three parcels in Pa`ia, noting that normally, such a development would be required to have a completed site plan and further review.

Your Committee agreed to recommend changing zoning from Interim District to B-CT Country Town Business District for a portion of the Mama's Fish House parking lot as requested by Mr. Hall. The Deputy Corporation Counsel noted that a new bill for conditional zoning would have to be prepared.

Your Committee is in receipt of two revised proposed bills with the aforementioned additional language and a non-substantive change to the dates of the bills from 1997 to 2000.

Your Committee is also in receipt of a proposed conditional zoning bill entitled, "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM

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DISTRICT TO B-CT COUNTRY TOWN BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT PAIA, MAUI, HAWAII". The purpose of this bill is to change zoning from Interim District to B-CT Country Town Business District Zoning for a portion of the Mama's Fish House parking lot comprised of approximately .115 acres of land located in Pa'ia, identified for real property tax purposes as TMK No. 2-5-004:por. 024.

Your Land Use Committee RECOMMENDS the following:

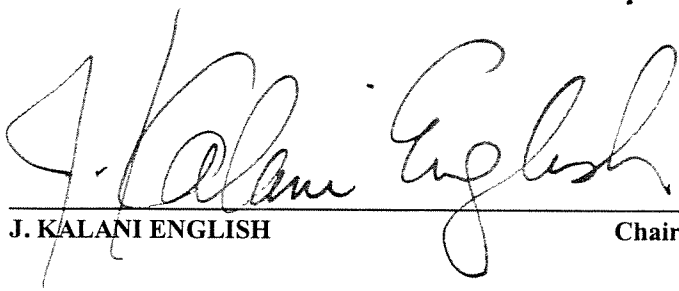
1. That Bill No. 90 (2000), as revised herein and attached hereto, entitled, "A BILL FOR AN ORDINANCE TO ADOPT A LAND ZONING MAP FOR THE URBAN DISTRICT OF PAIA", PASS FIRST READING and BE ORDERED TO PRINT;
2. That Bill No. 91 (2000), as revised herein and attached hereto, entitled, "A BILL FOR AN ORDINANCE TO ADOPT A LAND ZONING MAP FOR THE URBAN DISTRICT OF HAIKU", PASS FIRST READING and BE ORDERED TO PRINT;
3. That Bill No. 92 (2000), attached hereto, entitled, "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO B-CT COUNTRY TOWN BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT PAIA, MAUI, HAWAII", PASS FIRST READING AND BE ORDERED TO PRINT;
4. That the County Clerk RECORD the unilateral agreement; and
5. That County Communication No. 97-137 be FILED.

Adoption of this report is respectfully requested.

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J. KALANI ENGLISH Chair

DAIN P. KANE Member

CHARMAINE TAVARES Vice-Chair

PATRICK S. KAWANO Member

MICHAEL A. DAVIS Member

DENNIS Y. NAKAMURA Member

JOHN WAYNE ENRIQUES Member

WAYNE K. NISHIKI Member

G. RIKI HOKAMA Member

ORDINANCE NO. _____

BILL NO. 90 (2000)
(as revised)

A BILL FOR AN ORDINANCE TO ADOPT A LAND ZONING MAP
FOR THE URBAN DISTRICT OF PAIA

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

SECTION 1. The purpose of this bill is to adopt a land zoning map for the state-designated urban district of Paia, as of the date of this ordinance in conformance with the Paia-Haiku Community Plan adopted by the Maui County Council on May 17, 1995.

SECTION 2. All lands previously subject to interim zoning are hereby zoned as set forth on Land Zoning Map No. 15, which is on file in the Office of the County Clerk of the County of Maui and which is by this reference made a part hereof. All zoning ordinances other than interim which have been adopted for those lands within the Urban district of Paia prior to this date, i.e., Ordinance Nos. 1337, 1559, 1639, 1670, 1879, 1949, 2176, 2446, 2605, 2711, 2712, 2713, 2714, 2715, 2750 and 2814 are incorporated within Land Zoning Map No. 15. These ordinances, and any conditions which are contained therein, shall remain in full force and effect.


SECTION 3. Special use permits, conditional permits and variances issued prior to the enactment of this ordinance shall remain in full force and effect for their duration, and their renewal shall be subject to the applicable provisions of Title 19, Maui County Code. Any dwelling or structure that was constructed with a building permit that was approved prior to the enactment of this ordinance need not acquire a County special use permit, conditional permit or variance and may be reconstructed as permitted by the original building permit(s), and such

dwellings or structures may be expanded or modified with a building permit, subject to the other applicable provisions of Title 19, Maui County Code, notwithstanding the provisions of Section 19.500.110, Maui County Code.

SECTION 4. Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or applications, and, to this end, the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be effective upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



KELLY A. CAIRNS
Deputy Corporation Counsel
County of Maui

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ORDINANCE NO. _____

BILL NO. 91 (2000)

A BILL FOR AN ORDINANCE TO ADOPT A LAND ZONING MAP
FOR THE URBAN DISTRICT OF HAIKU

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

SECTION 1. The purpose of this bill is to adopt a land zoning map for the state-designated Urban district of Haiku, as of the date of this ordinance in conformance with the Paia-Haiku Community Plan adopted by the Maui County Council on May 17, 1995.

SECTION 2. All lands within the Urban district of Haiku previously subject to Interim zoning are hereby zoned as set forth on Land Zoning Map No. 25, on file in the office of the County Clerk of the County of Maui and which is by this reference made a part hereof. All zoning ordinances other than Interim which have been adopted for those lands within the Urban district of Haiku prior to this date, i.e., Ordinance Nos. 1372, 1509, 1853, 2084, 2118, 2147, 2275, 2582, 2599, 2616, 2713, 2714, 2716, 2767 and 2884, are incorporated within Land Zoning Map No. 25. These ordinances, and any conditions which are contained therein, shall remain in full force and effect.


SECTION 3. Special use permits, conditional permits and variances issued prior to the enactment of this ordinance shall remain in full force and effect for their duration, and their renewal shall be subject to the applicable provisions of Title 19,

Maui County Code. Any dwelling or structure that was constructed with a building permit that was approved prior to the enactment of this ordinance need not acquire a County special use permit, conditional permit or variance and may be reconstructed as permitted by the original building permit(s), and such dwellings or structures may be expanded or modified with a building permit, subject to the other applicable provisions of Title 19, Maui County Code, notwithstanding the provisions of Section 19.500.110, Maui County Code.

SECTION 4. Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or applications, and, to this end, the provisions of this ordinance are severable.

SECTION 5. This ordinance shall be effective upon its approval.

APPROVED AS TO FORM
AND LEGALITY:


KELLY A. CAIRNS
Deputy Corporation Counsel
County of Maui

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ORDINANCE NO. _____

BILL NO. 92 (2000)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO B-CT COUNTRY TOWN BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT PAIA, MAUI, HAWAII


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

SECTION 1. Pursuant to Chapters 19.15 and 19.510, Maui County Code, B-CT Country Town Business District Zoning (conditional zoning) is hereby established for that certain parcel of land located in Paia, Maui, Hawaii, identified for real property tax purposes by Tax Map Key No. 2-5-004:por. 024, comprised of approximately 0.155 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-2751, which is on file in the Office of the County Clerk of the County of Maui, and which is by this reference made a part hereof.

SECTION 2. Pursuant to Section 19.510.050, Maui County Code, the zoning established 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 as Exhibit "C" and made a part hereof.

SECTION 3. This ordinance shall take effect upon approval.

APPROVED AS TO FORM
AND LEGALITY:


KELLY A. CAIRNS
Deputy Corporation Counsel
County of Maui

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LAND DESCRIPTION

All that certain parcel of land known as a portion of the land deeded by the Board of Education to the Trustees of the Oahu College dated January 30, 1860 in Book 12, Pages 400 to 403.

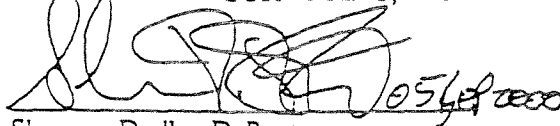
Situate at
Kuau-Hamakuapoko, Makawao, Maui, Hawaii
Tax Map Key: (2) 2-5-04: Portion 24

Beginning at a point at the southerly corner of this parcel of land, being a point on the northwesterly right-of-way line of Hana Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUNENE" being 11,208.80 feet north and 10,258.97 feet east and running by azimuths measured clockwise from true south; thence,

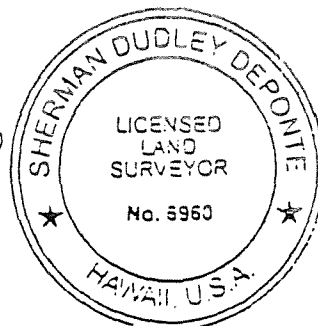
- | | | | |
|----|------------|--------|---|
| 1. | 143°09'00" | 45.82 | feet along the remainder of the land deeded by the Board of Education to the Trustees of the Oahu College dated January 30, 1860 in Book 12, Pages 400 to 403 to a point; thence, |
| 2. | 165°00'00" | 45.30 | feet along the same to a point; thence, |
| 3. | 78°10'00" | 30.06 | feet along the same to a point; thence, |
| 4. | 240°07'00" | 44.84 | feet along the shoreline along the upper reach of waves as evident by the top of pali and vegetation line as certified by the State of Hawaii on December 11, 1998, and all it's sinuosities (northerly property boundary line) to a point; thence, |
| 5. | 272°50'00" | 49.70 | feet along the same to a point; thence, |
| 6. | 289°16'00" | 30.90 | feet along the same to a point; thence, |
| 7. | 289°16'00" | 34.61 | feet along the remainder of the land deeded by the Board of Education to the Trustees of the Oahu College dated January 30, 1860 in Book 12, Pages 400 to 403 to a point; thence, |
| 8. | 48°25'00" | 109.27 | feet along the northwesterly right-of-way line of Hana Highway to the point of beginning and containing an area of 0.155 acre. |

This work was done by me or
under my direct supervision.

AKAMAI LAND SURVEYING, INC.



Sherman Dudley DePonte
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 6960



CONDITIONS

1. The uses permitted by the establishment of B-CT Country Town Business District zoning shall be limited to a single-story ground level parking lot and shall not include any buildings or structures other than any which may be necessary to ensure public safety.
2. The uses permitted by the establishment of B-CT Country Town Business District zoning shall not obstruct or prevent public access to the shoreline and shall comply with any applicable governmental requirements.
3. The applicant shall provide on-site archaeological monitoring of all ground-altering excavations and landscaping, and shall provide a report of findings to the State Historic Preservation Division for adequacy review and approval.

Exhibit "B"



LAND COURT SYSTEM

REGULAR SYSTEM

After Recordation Return by Mail () Pickup () To:

Office of the County Clerk
County of Maui
200 S. High Street
Wailuku, Hawaii 96793

TOTAL NUMBER OF PAGES: 7

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96-571/4539.01/DJ/kh
Affects Tax Map Key (2) 2-5-04: portion of 24

UNILATERAL AGREEMENT AND
DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this September 7, 2000, by **ALEXANDER & BALDWIN, INC.**, a Hawaii corporation, whose address is 822 Bishop Street, Honolulu, Hawaii 96813, hereinafter referred to as the "Declarant", and who is the owner of that certain parcel of land located at Kuau, Maui, Hawaii, comprised of approximately 0.155 acres, and identified for real property tax purposes by Tax Map Key No. (2) 2-5-04: portion of 24, hereinafter referred to as "Property".

W I T N E S S E T H :

WHEREAS, the Council of the County of Maui, State of Hawaii, hereinafter referred to as "Council", is considering the establishment of zoning for the Property, comprising of approximately 0.155 acres, which is more particularly described in Exhibit "1" attached hereto and made a part hereof, and which is more particularly identified in Land Zoning Map No. 1517, which is on file in the Office of the County Clerk of the County of Maui; and

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. _____, that said establishment of zoning be approved for passage on second reading subject to certain conditions pursuant to Section 19.510.050, Maui County Code; and

WHEREAS, Declarant has agreed to execute this instrument pursuant to the conditional zoning provisions of said Section 19.510.050, Maui County Code; and

NOW, THEREFORE, the Declarant hereby makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.510.050, Maui County Code, relating to conditional zoning;

2. That until written release by the County, the Property, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions contained herein and that all of such covenants, conditions and restrictions shall be effective as to and shall run with the land as to the Property from and after the recording of this Declaration with the Bureau of Conveyances or Land Court of the State of Hawaii, as the case may be, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign, as the case may be, of any of them, that the acquisition of any right, title or interest in or with respect to the Property by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities, and that upon any transfer of any right, title or interest in or with respect to the Property the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform, all of the covenants, conditions and restrictions of this Declaration;

3. This Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to run with the land in perpetuity, or until Declarant notifies the appropriate County Department that said covenants, conditions and restrictions are satisfied by Declarant at which time after verification by the appropriate County Department this Declaration or the appropriate covenant, condition and restriction shall be released in writing by the County;

4. The term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", Declarant's successors, and assigns;

5. That the Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of B-CT Country Town Business District zoning for the Property and this Declaration shall be recorded in the Bureau of Conveyances of the State of Hawaii;

6. That the Declarant agrees to develop said Property in conformance with the conditions set forth in Exhibit "2", which is attached hereto and made a part hereof and which shall be made a part of the zoning ordinance; and

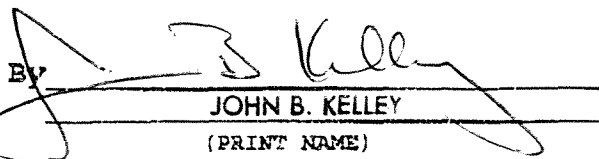
7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use.

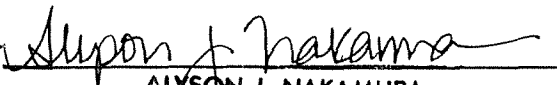
AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors and any other persons who claim an interest in the said land, and the County of Maui shall have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successor and assigns may at any time file a petition for the removal of the conditions and terminate this Unilateral Agreement, such petition to be processed in the same manner as petitions for change in zoning.

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

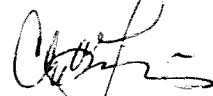
DECLARANT:

ALEXANDER & BALDWIN, INC.,
a Hawaii corporation


By 
JOHN B. KELLEY
(PRINT NAME)
Its VICE PRESIDENT
(PRINT POSITION)

By 
ALYSON J. NAKAMURA
(PRINT NAME)
Its SECRETARY
(PRINT POSITION)

APPROVED AS TO FORM:


CHARLES W. LOOMIS
Attorney for Declarant

APPROVED AS TO FORM AND LEGALITY:

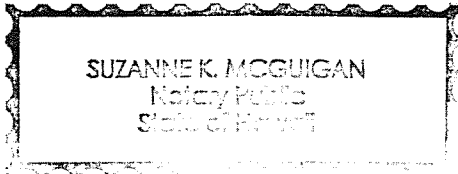

KELLY ANNE CAIRNS
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS.

On this 7th day of September, 2000, before me appeared JOHN B. KELLEY and ALYSON J. NAKAMURA to me personally known, who, being by me duly sworn, did say that they are the VICE PRESIDENT and SECRETARY of ALEXANDER & BALDWIN, INC., a Hawaii corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and the said officers acknowledged said instrument to be the free act and deed of said corporation.



Suzanne K. McGuigan
SUZANNE K. MCGUIGAN
Notary Public, in and for said
County and State.

My commission expires: 2/18/2001

LAND DESCRIPTION

All that certain parcel of land known as a portion of the land deeded by the Board of Education to the Trustees of the Oahu College dated January 30, 1860 in Book 12, Pages 400 to 403

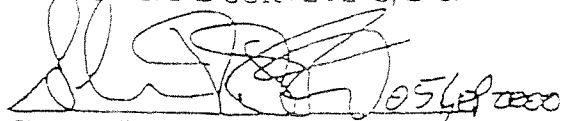
Situate at
Kuuu-Hamakuapoko, Makawao, Maui, Hawaii
Tax Map Key: (2) 2-5-04 Portion 24

Beginning at a point at the southerly corner of this parcel of land, being a point on the northwesterly right-of-way line of Hana Highway, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUUNENE" being 11,208.80 feet north and 10,258.97 feet east and running by azimuths measured clockwise from true south; thence,

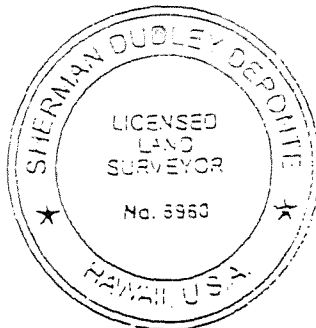
- | | | | |
|----|------------|--------|---|
| 1. | 143°09'00" | 45.82 | feet along the remainder of the land deeded by the Board of Education to the Trustees of the Oahu College dated January 30, 1860 in Book 12, Pages 400 to 403 to a point; thence, |
| 2. | 165°00'00" | 45.30 | feet along the same to a point; thence, |
| 3. | 78°10'00" | 30.06 | feet along the same to a point; thence, |
| 4. | 240°07'00" | 44.84 | feet along the shoreline along the upper reach of waves as evident by the top of pali and vegetation line as certified by the State of Hawaii on December 11, 1998, and all it's sinuosities (northerly property boundary line) to a point; thence, |
| 5. | 272°50'00" | 49.70 | feet along the same to a point; thence, |
| 6. | 289°16'00" | 30.90 | feet along the same to a point; thence, |
| 7. | 289°16'00" | 34.61 | feet along the remainder of the land deeded by the Board of Education to the Trustees of the Oahu College dated January 30, 1860 in Book 12, Pages 400 to 403 to a point; thence, |
| 8. | 48°25'00" | 109.27 | feet along the northwesterly right-of-way line of Hana Highway to the point of beginning and containing an area of 0.155 acre. |

This work was done by me or
under my direct supervision.

AKAMAI LAND SURVEYING, INC.



Sherman Dudley DePonte
Licensed Professional Land Surveyor
State of Hawaii Certificate No. 6960



CONDITIONS

1. The uses permitted by the establishment of B-CT Country Town Business District zoning shall be limited to a single-story ground level parking lot and shall not include any buildings or structures other than any which may be necessary to ensure public safety.
2. The uses permitted by the establishment of B-CT Country Town Business District zoning shall not obstruct or prevent public access to the shoreline and shall comply with any applicable governmental requirements.
3. The applicant shall provide on-site archaeological monitoring of all ground-altering excavations and landscaping, and shall provide a report of findings to the State Historic Preservation Division for adequacy review and approval.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

as of December 15, 1998

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawai'i

Chair and Members:

Your Land Use Committee, having met on , makes reference to County Communication No. 97-137, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO ADOPT A LAND ZONING MAP FOR THE URBAN DISTRICT OF PAIA".

The purpose of the proposed bill is to change the zoning of all parcels with Interim District zoning in the State Urban District of the Pa`ia and Kuau areas.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO ADOPT A LAND ZONING MAP FOR THE URBAN DISTRICT OF HAIKU".

The purpose of the proposed bill is to change the zoning of all parcels with Interim District zoning in the State Urban District of the Pauwela and Ha`iku areas.

3. Other related documents.

Both proposed bills seek to establish the appropriate zoning for virtually all Interim-zoned urban parcels in the Pa`ia-Ha`iku Community Plan region, based on the parcels' current uses and their designations in the Community Plan, which was adopted by the County in 1995. Parcels for which no appropriate zoning district exists, or parcels that should undergo specific public review, would be placed in the Urban Reserve District.

Your Committee notes that the Maui Planning Commission held a public hearing on the proposed bills on December 9, 1996. At the hearing, two people

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testified in favor of the proposed bills and two people expressed general concerns over specific parcels.

Your Committee further notes that at its special meeting of December 9, 1996, the Maui Planning Commission reviewed the findings presented in the document entitled "PLANNING DIRECTOR'S REPORT AND RECOMMENDATION", and voted to recommend approval of the proposed bills with one amendment. Because one of the Planning Commissioners expressed a conflict of interest with one property, and because there were only five Commissioners present, the Commission made no recommendation for the subject property, TMK: 2-5-5:14 and 16, the "lime kiln" site in Pa`ia. Your Committee notes that the Department of Planning recommends that these parcels be granted Urban Reserve and PK-2 Community Park District zoning, respectively.

Your Committee further notes that County Communication No. 97-137 was referred to the prior Council's Land Use Committee at the Council meeting of March 21, 1997.

The Committee previously reported on the matter through Committee Report No. 97-232, which recommended that a proposed bill to establish B-CT Country Town Business District zoning for approximately 50 commercial properties in Pa`ia and Kuau pass first reading. Your Committee notes that Committee Report No. 97-232 was adopted at the Council meeting of November 7, 1997, thus designating the proposed zoning bill as Bill No. 70 (1997), which was subsequently designated as Ordinance No. 2605 upon its approval by the Mayor.

The Committee also previously reported on the matter through Committee Report No. 97-255, which recommended that a proposed bill to establish B-CT Country Town Business District zoning for five commercial properties in Ha`iku pass first reading. Your Committee notes that Committee Report No. 97-255 was adopted at the Council meeting of December 1, 1997, thus designating the proposed zoning bill as Bill No. 80 (1997), which was subsequently designated as Ordinance No. 2616 upon its approval by the Mayor.

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The Committee also previously reported on the matter through Committee Report No. 98-129, which recommended that a proposed bill to establish conditional B-CT Country Town Business District zoning for the property occupied by Mama's Fish House "upper" parking lot pass first reading. Your Committee notes that Committee Report No. 98-129 was adopted at the Council meeting of August 7, 1998, thus designating the proposed conditional zoning bill as Bill No. 61 (1998), which was subsequently designated as Ordinance No. upon its approval by the Mayor (***the ordinance was not designated as of 12-15-98 due to problems with recordation of UA -- mnc***).

The Committee also previously reported on the matter through Committee Report No. 98-175, which recommended that six proposed zoning bills pass first reading and be ordered to print. Committee Report No. 98-175 was adopted at the Council meeting of October 16, 1998, thus designating the proposed zoning bills as Bill Nos. 86 (1998), 87 (1998), 88 (1998), 89 (1998), 90 (1998) and 91 (1998), which were subsequently designated as Ordinance Nos. 2711, 2712, 2713, 2714, 2715 and 2716 respectively, upon their approval by the Mayor.

Ordinance No. 2711 established R-1 Residential District zoning for approximately 200 residential parcels in Pa'ia, virtually all of which are 12,000 square feet or smaller and which, therefore, are too small to be subdivided. Ordinance No. 2712 established A-2 Apartment District zoning for the property occupied by the Kuau Plaza apartment building. Ordinance No. 2713 established P-1 Public/Quasi-Public District zoning for approximately 20 parcels in Pa'ia and Ha'iku that are in existing public/quasi-public use, such as churches, community centers and schools. Ordinance Nos. 2714 and 2715 established PK-1 Neighborhood Park and PK-2 Community Park District zoning, respectively, for five parcels in Pa'ia and Ha'iku that are in existing park use. Ordinance No. 2716 established B-CT Country Town Business District zoning for three parcels in Ha'iku, based upon testimony from the property owners in support of the proposed zoning.

Your Committee notes that the Committee did not make recommendations on larger residential parcels, due to the subdivision potential that could be created by the proposed zoning. The Committee also did not make recommendations on parcels that have been recommended for zonings that do

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not recognize existing use, due to concern that the owners of these parcels may not be aware of the implications of the proposed zoning.

By letter dated September 1, 1998, the Planning Director responded to a previous question concerning the "split-designation" of TMK No. 2-6-04:14, a parcel in Pa`ia town that is designated as Business/Commercial and Single-Family in the Pa`ia-Ha`iku Community Plan and that was partially zoned by Ordinance No. 2605.

By memorandum dated September 2, 1998, the Council Chair transmitted a facsimile memorandum from Randy Piltz, dated September 1, 1998, regarding the A-2 Apartment District zoning that was established for Kuau Plaza.

By letter dated September 16, 1998, the Planning Director provided draft letters to notify the property owners affected by Ordinance Nos. 2711 through 2716, requesting the Committee's comments.

By memorandum dated September 21, 1998, the Chair of the Committee circulated the Planning Director's draft letters, requesting comments.

By letter dated October 5, 1998, the Planning Director was asked for additional clarification relating to the zoning of TMK No. 2-6-04:14.

By letter dated October 22, 1998, the Planning Director provided a detailed description of the split-designated and zoned areas of TMK No. 2-6-04:14.

At its meeting of December 1, 1998, the Committee agreed to recommend that County Communication No. 97-137 be referred to the Council Chair for the term beginning January 2, 1999, for recommendation as to referral or other disposition.

At its meeting of December 18, 1998, the Council referred County Communication No. 97-137 to the Council Chair for the term beginning January 2, 1999, for recommendation as to referral or other disposition. (Committee Report No. 98-235).

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LAND USE COMMITTEE

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At its meeting of January , 1999, the Council referred County Communication No. 97-137 to your Land Use Committee (County Communication No. 99-).

At its meeting of , your Committee met with

Your Land Use Committee RECOMMENDS

Adoption of this report is respectfully requested.

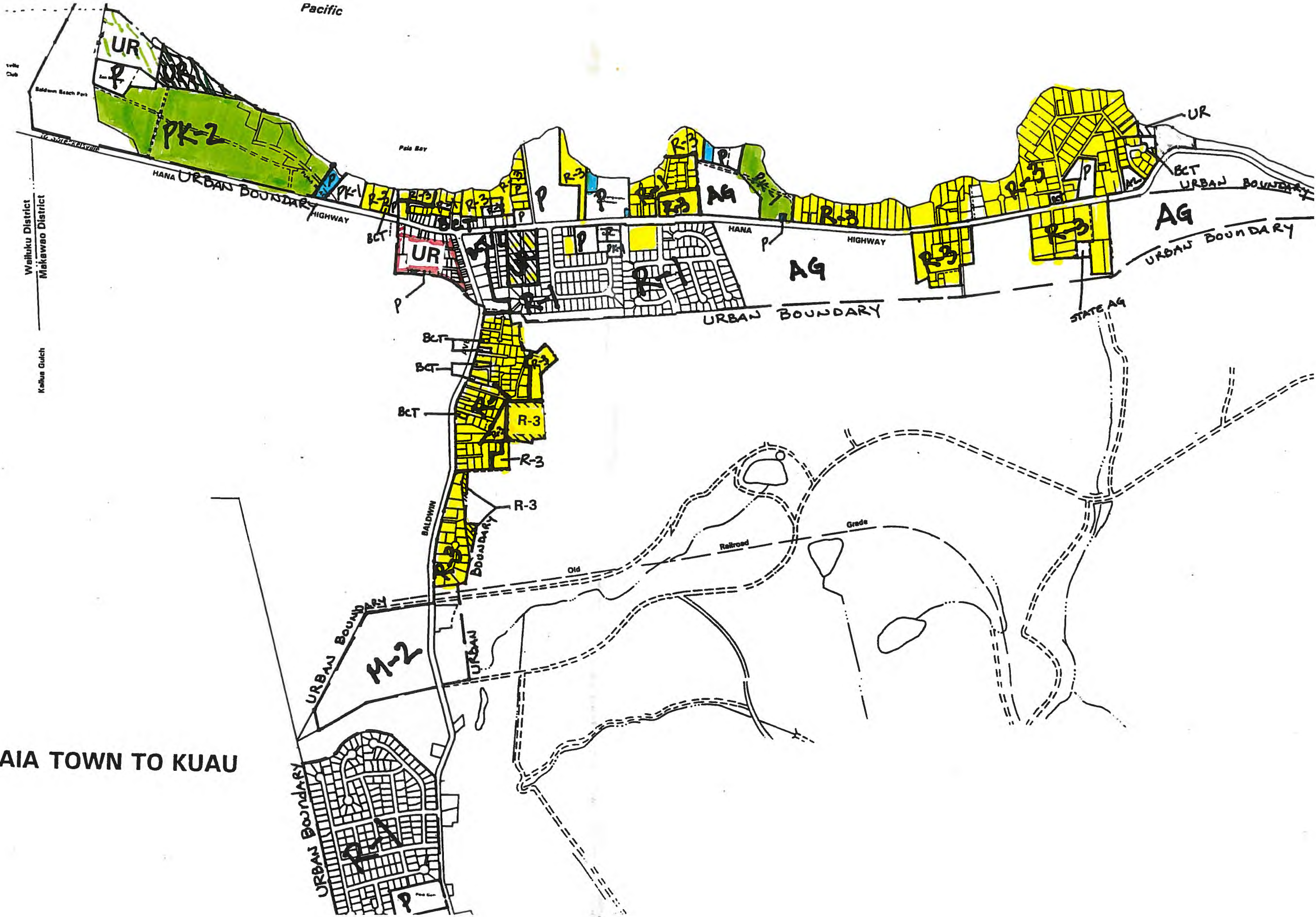
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COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

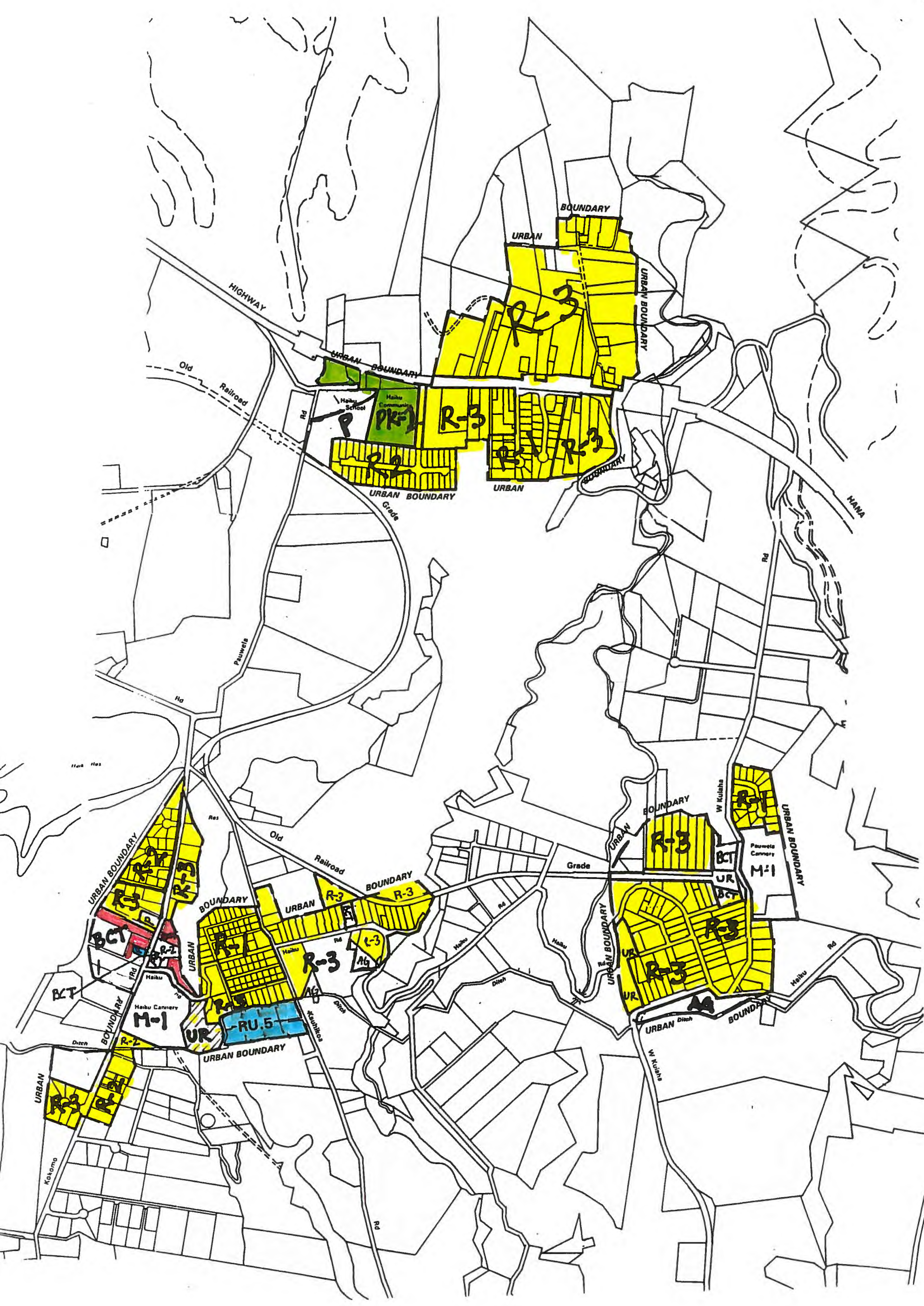
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Pacific



PAIA TOWN TO KUAU



HAIKU TO PAUWELA