

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

January 6, 2012

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Land Use Committee, having met on December 14, 2011, makes reference to County Communication 11-285, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM URBAN RESERVE DISTRICT TO SERVICE BUSINESS RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 4869 UAKEA ROAD, HANA, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from John Romain ("property owner") for a Change in Zoning from Urban Reserve District to Service Business Residential District to allow for the operation of the Bamboo Inn Bed & Breakfast on approximately 0.622 acre identified as TMK: (2) 1-4-05:026, located at 4869 Uakea Road, Hana, Maui, Hawaii ("subject property").

A Planner with the Department of Planning informed your Committee that the Hana Community Plan, adopted by Ordinance 2347 (1994), designates the subject property as Service Business Residential ("SBR"). Where possible, the Council comprehensively zoned the Hana area to be consistent with the Hana Community Plan; however, there was no provision in the Maui County Code ("MCC") establishing SBR zoning. Consequently, the Council zoned the subject property as Urban Reserve District. A bed and breakfast home is not a permitted use in the Urban Reserve District. Ordinance 3681 (2009) established the SBR District. The proposed bill would provide consistency with the Hana Community Plan and allow for the operation of the bed and breakfast.

Your Committee notes that Section 19.11.020, MCC, relating to the SBR District, permits single-family dwellings; duplex dwellings; greenhouses, truck gardens, and nurseries; SBR service establishments; SBR mixed-use establishments; and bed and breakfast homes. As defined in Section 19.04.040, MCC, an SBR establishment may include business and professional offices, food service establishments, retail establishments, and other neighborhood-scale commercial uses that are determined by the Planning Director to be of similar character and use.

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Your Committee further notes that the Hana Advisory Committee to the Maui Planning Commission (“HAC”) suggested a condition to limit the permitted uses on the subject property to single-family dwellings, duplex dwellings, and bed and breakfast homes. The Maui Planning Commission agreed with the suggestion. Thus, the proposed bill incorporates the condition. The Planner informed your Committee that the HAC was concerned that the Hana community would not support some of the uses permitted as an SBR establishment, such as an office.

The property owner requested that your Committee consider deleting the condition. Your Committee decided to retain the condition, as recommended by the Maui Planning Commission, and noted that the property owner does not have plans to engage in uses prohibited by the condition.

Your Committee voted 5-0 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Carroll, Vice-Chair White, and members Cochran, Pontanilla, and Victorino voted “aye”. Committee members Baisa, Couch, Hokama, and Mateo were excused.

Your Committee is in receipt of an agreement entitled “Unilateral Agreement and Declaration for Conditional Zoning” executed by the property owner. Your Committee is also in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions and the Unilateral Agreement.

Your Land Use Committee **RECOMMENDS** the following:


1. That Bill _____ (2012), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM URBAN RESERVE DISTRICT TO SERVICE BUSINESS RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 4869 UAKEA ROAD, HANA, MAUI, HAWAII”, be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That the County Clerk RECORD the “Unilateral Agreement and Declaration for Conditional Zoning”; and
3. That County Communication 11-285 be FILED.

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**Committee
Report No.** _____

This report is submitted in accordance with Rule 8 of the Rules of the Council.



ROBERT CARROLL, Chair

lu:cr:11021aa:kmh

ORDINANCE NO. _____

BILL NO. _____ (2012)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM URBAN RESERVE DISTRICT TO SERVICE BUSINESS RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 4869 UAKEA ROAD, HANA, MAUI, HAWAII,

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


SECTION 1. Pursuant to Chapters 19.11 and 19.510, Maui County Code, a change in zoning from Urban Reserve District to Service Business Residential District (Conditional Zoning) is hereby granted for that certain parcel of land situated at 4869 Uakea Road, Hana, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2) 1-4-005:026, comprising approximately .622 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-1616, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

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

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



 JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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DESCRIPTION
PORTION LOT 4 OF THE PARTITION OF
GRANT 2970 TO KAUAAWA AND HANAKAHI
PARCEL 26 OF TAX MAP KEY: (2) 1-4-005

All of that certain parcel of land, being a Portion of Lot 4 of the Partition of Grant 2970 to Kauaawa and Hankahi, being Parcel 26 of Tax Map Key: (2) 1-4-005, situated at Kawaipapa, Hana, Island and County of Maui, State of Hawai'i and being more particularly described as follows:

Beginning at a found ½-inch pipe at the southerly corner south corner of this parcel of land, on the northeasterly boundary of the Uakea Road right-of-way, said pipe also being the westerly corner of Lot 3 of said Partition of Grant 2970 to Kauaawa and Hankahi, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being:

1,756.10 feet North
2,005.68 feet West

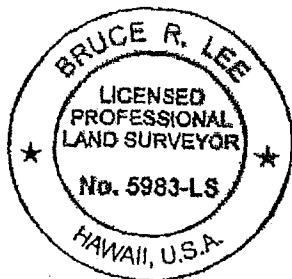
and running by azimuths measured clockwise from true South:

1. 123° 51' 00" 104.48 feet along said northeasterly boundary of the Uakea Road right-of-way to a found ¾-inch pipe at the south corner of Lot "B" of the Smith Subdivision (being all of Lot 5 and a Portion of Lot 4 of said Partition of Grant 2970 to Kauaawa and Hankahi);
2. 219° 46' 00" 154.74 feet along said Lot "B" of the Smith Subdivision (being all of Lot 5 and a Portion of Lot 4 of said Partition of Grant 2970 to Kauaawa and Hankahi) to a found drill hole in rock;
3. 95° 49' 00" 63.49 feet along said Lot "B" of the Smith Subdivision (being all of Lot 5 and a Portion of Lot 4 of said Partition of Grant 2970 to Kauaawa and Hankahi) to a found ½-inch pipe on the southeasterly boundary of Lot 1 of the Waikoloa Surf Subdivision and Grant 10901, Apana 2 to Kaeleku Sugar Company, Limited;
4. 197° 30' 00" 12.96 feet along said Lot 1 of the Waikoloa Surf Subdivision, along Grant 10901, Apana 2 to Kaeleku Sugar Company, Limited to a found ½-inch pipe at the southwest corner of Grant 3102 to Ainoa Kanenui;


5. 263° 25' 00" 239.92 feet along said Grant 3102 to Ainoa Kanenui (passing over a found chiseled cross in rock at a distance of 163.16 feet) to a found ½-inch pipe at the northerly corner of said Lot 3 of the Partition of Grant 2970 to Kauaawa and Hankahi;
6. 40° 34' 00" 294.13 feet along said Lot 3 of the Partition of Grant 2970 to Kauaawa and Hankahi to the point of beginning and containing an area of 0.622 Acre, more or less.

Prepared by:

**NEWCOMER-LEE
LAND SURVEYORS, INC.**, a Hawai'i Corporation



This description was prepared from a survey on the ground performed by me or under my supervision.


BRUCE R. LEE
Licensed Professional Land
Surveyor Certificate No. 5983-LS

9/6/11
ROMAIN, JOHN
File 10-9047A
10-9047A John Romain TMK 1-4-005 Parcel 26

EXHIBIT "B"

CONDITIONS OF ZONING

1. That the uses and structures permitted on the property shall be limited to single-family dwellings, duplex dwellings, and bed and breakfast homes, subject to the provisions of Section 19.64.030 of the Maui County Code.

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: 8

Affects Tax Map Key (Maui) (2) 1-4-005:026

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 28th day of December 2011, by John S. Romain, Trustee under the John S. Romain Revocable Living Trust dated June 29, 2006, whose mailing address is P. O. Box 374, Hana, Hawaii 96713, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Hana, Maui, Hawai`i, comprised of approximately 0.662 acres, and identified for real property tax purposes by Tax Map Key No(s). (2) 1-4-5:026, hereinafter referred to as "PARCEL" (or "PROPERTY").

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai`i, hereinafter referred to as "Council", is considering the establishment of zoning for the Parcel, comprised of approximately 0.662 acres, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof,

L-1616, 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 first reading subject to certain conditions, pursuant to Section 19.510.050, Maui County Code; and

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

NOW, THEREFORE, the Declarant 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 of Maui, the Parcel, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which shall be effective as to and shall run with the land as to the Parcel, 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 thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Parcel 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 Parcel 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. That this Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until

by the Declarant, and the appropriate County Department verifies the satisfaction and provides a written release of the covenant, condition or restriction;

4. That 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", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That the Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of Service Business Residential District zoning and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawai'i;

6. That the Declarant agrees to develop said Parcel 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;

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 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 successors 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:



John S. Romain

APPROVED AS TO FORM AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

STATE OF Hawaii)

County of Maui)

SS.

On this 28th day of December, 2011, before me personally appeared John S. Romain, 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: MILIKA SIUA

My Commission Expires: 5/15/2015

[Stamp or Seal]

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NOTARY PUBLIC CERTIFICATION

Doc. Date: 12/28/2011 # Pages: 8

Notary Name: MILIKA SIUA Judicial Circuit: Second

Document Description: Unilateral Agreement
and Declaration for Conditional

Zoning

[Stamp or Seal]

Notary Signature: 

S

Date: 12/28/2011

Exhibit 1

DESCRIPTION
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PARCEL 26 OF TAX MAP KEY: (2) 1-4-005**

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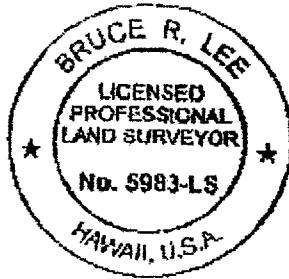
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Prepared by:

NEWCOMER-LEE
LAND SURVEYORS, INC., a Hawai'i Corporation



This description was prepared from a survey on the ground performed by me or under my supervision.

Bruce R. Lee 12/10 04/12

BRUCE R. LEE

Licensed Professional Land
 Surveyor Certificate No. 5983-LS

9/8/11
 ROMAIN, JOHN
 File 10-9047A
 10-9047A John Romain TMK 1-1-005 Parcel 26

Exhibit 2

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1. That the uses and structures permitted on the property shall be limited to single - family dwellings, duplex dwellings, and bed and breakfast homes, subject to the provisions of Section 19.64.030 of the Maui County Code.