

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

October 5, 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 June 13, 2012, and August 1, 2012, makes reference to County Communication 12-73, 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 HANA, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Mark and Haunani Collins ("Applicants") for a Change in Zoning from Urban Reserve District to Service Business Residential ("SBR") District for a parcel consisting of approximately 0.989 acre, located at 4950 Uakea Road, Hana, Maui, Hawaii (TMK: (2) 1-4-013:039) ("property"). According to the County Communication, the Applicants requested the Change in Zoning because they wish to conduct a neighborhood-scale commercial fish processing operation on their property. They would also like to continue to operate a three-bedroom transient vacation rental known as the Hana Bay Hale on the property. The property is owned by Mark and Haunani Collins and Haunani's brother, Jay W. Fredholm.

Your Committee notes that the property is currently designated as Service Business Residential in the Hana Community Plan. The Department of Planning states in its report to the Hana Advisory Committee that the Applicants' proposed use is consistent and in harmony with the requested SBR zoning district.

Your Committee further notes that Chapter 19.11, Maui County Code ("MCC"), pertaining to the SBR zoning district, allows for SBR service establishments as a permitted use. Section 19.04.040, MCC, defines such establishments as "a structure from which neighborhood-scale commercial services are provided to the public from a gross floor area not greater than two thousand square feet, including display, storage, and accessory areas". SBR service establishments are, therefore, limited in size by their definition. Nonetheless, the Hana Advisory Committee recommended a condition of zoning to prohibit a "large-scale commercial fish processing operation" on the property.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

October 5, 2012
Page 2

Committee
Report No. _____

Your Committee further notes that a Deputy Corporation Counsel advised the Hana Advisory Committee that the Department would refer to the definition of SBR service establishments in interpreting the prohibition of a "large-scale" operation, since "large-scale" is not otherwise defined. Mr. Collins confirmed that the size of the fishery is limited by the lack of facilities available, and that a 2,000-square-foot floor area limit would only allow for a very small operation. Accordingly, it is your Committee's understanding that the condition of zoning prohibiting a large-scale commercial operation is consistent with the definition of SBR service establishments and the 2,000-square-foot floor area limitation.

According to the County Communication, the SBR zoning district would also allow, with a special use permit, the continued operation of the three-bedroom transient vacation rental.

Your Committee notes that the Council enacted legislation to establish a permitting process for short-term rental homes by Ordinance 3941 (2012), effective May 23, 2012. Pursuant to the ordinance, short-term rental homes are permitted in the SBR zoning district with an approved permit, subject to the provisions of Chapter 19.65, MCC.

Your Committee recommended that the proposed bill be revised by inserting the property address in the title, to better identify the property being considered.

Your Committee voted 8-0 to recommend passage of the revised proposed bill on first reading, and filing of the communication. Committee Chair Carroll, Vice-Chair White, and members Baisa, Cochran, Couch, Mateo, Pontanilla, and Victorino voted "aye". Committee member Hokama was excused.

Your Committee is in receipt of an agreement entitled "Unilateral Agreement and Declaration for Conditional Zoning" executed by the property owners. Your Committee is also in receipt of a revised 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 4950 UAKEA ROAD, HANA, MAUI, HAWAII", approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

October 5, 2012
Page 3

Committee
Report No. _____

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 4950 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
3. That County Communication 12-73 be FILED.

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



ROBERT CARROLL, Chair

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
4950 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 Hana, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2) 1-4-013:039, comprising approximately 0.989 acre, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-1615, which is on file at 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 condition 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

T74-000069318

SCHEDULE C

The land referred to in this policy is described as follows:

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 1242, Land Commission Award Number 615 to Ulunahale) situate, lying and being at Wananalua, District of Hana, Island and County of Maui, State of Hawaii, and thus bounded and described as per survey of James R. Thompson, Registered Professional Land Surveyor, dated July 27, 1989, to-wit:

Beginning at a pipe at the east corner of this parcel of land and at the west corner of the intersection of Uakea Road and Keanini Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAUIKI" being 1,008.13 feet north and 1,432.15 feet west and thence running by azimuths measured clockwise from true South:

- 1. 65° 40' 109.79 feet along Keanini Drive and along Lot K being a portion of File Plan 866 to a pipe;
- 2. 148° 50' 395.39 feet along Lots 66, 9, 12 and 14 of File Plan 1481 to a pipe;
- 3. 245° 59' 30" 110.00 feet along Lot 14 of File Plan 1481 and along the remainder of R. P. 1242, L. C. Aw. 615 to Ulunahale to a pipe;

EXHIBIT "A"

SCHEDULE C CONTINUED

4. 328° 51' 10" 394.75 feet along the southerly side of Uakea Road to the point of beginning and containing an area of 0.989 acre, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : BRUCE MORSE and DOROTHY MORSE, husband and wife

GRANTEE : MARK D. COLLINS, husband of Haunani Collins, HAUNANI COLLINS, wife of Mark D. Collins and JAY WILLIAM FREDHOLM, single, as Joint Tenants

DATED : May 21, 2007

RECORDED : Document No. 2007-094129

END OF SCHEDULE C

EXHIBIT "B"

CONDITION OF ZONING

1. That a large-scale commercial fish processing operation shall be prohibited.

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: 10

Affects Tax Map Key (Maui) (2) 1-4-013:039

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 8/27/12 day of August, 2012, by Mark D. Collins, Haunani Collins and Jay W. Fredholm, whose principal place of business is located in Hana, Maui, Hawaii, and whose mailing address is Post Office Box 568, Hana, Hawaii 96813, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Hana, Maui, Hawai`i, 96813 comprised of approximately .989 acres, and identified for real property tax purposes by Tax Map Key No(s) (2) 1-4-013:039, 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 .989 acres, which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and which is more particularly identified in Land Zoning Map No. L-1615 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 the Declarant notifies the appropriate County Department that any of said covenants, conditions and restrictions are satisfied 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.

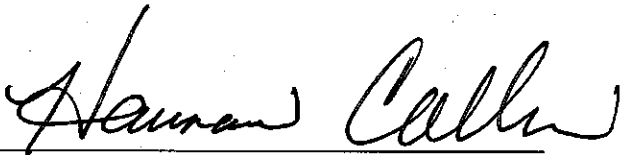
IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

DECLARANT:



MARK D. COLLINS

DECLARANT:




HAUNANI COLLINS

DECLARANT:



JAY W. FREDHOLM

APPROVED AS TO FORM AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII

)

) SS.

COUNTY OF MAUI

)

On this 10th day of September, 2012, before me personally appeared MARK D. COLLINS, 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.

Melissa E. Magonigle

Notary Public, State of HAWAII

[Stamp or Seal]

LS

Print Name: Melissa E. Magonigle

My Commission Expires: Feb. 22, 2013

NOTARY PUBLIC CERTIFICATION

Doc. Date: ~~Sept. 10, 2012~~ ^{MEM} 8/27/12 # Pages: 10

Notary Name: Melissa E. Magonigle Judicial Circuit: Second

Document Description: Unilateral Agreement

[Stamp or Seal]

Notary Signature: *Melissa E. Magonigle*

Date: 9/10/12

LS

STATE OF HAWAII

)

SS.

COUNTY OF MAUI

)

On this 10th day of September, 2012, before me personally appeared HAUNANI COLLINS, 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.

Melissa E. Magonigle
Notary Public, State of HAWAII

[Stamp or Seal]

5

Print Name: Melissa E. Magonigle

My Commission Expires: Feb. 22, 2013

NOTARY PUBLIC CERTIFICATION

Doc. Date: 8/27/12 # Pages: 10

Notary Name: Melissa E. Magonigle Judicial Circuit: Second

Document Description: Unilateral Agreement

[Stamp or Seal]

Notary Signature: *Melissa E. Magonigle*

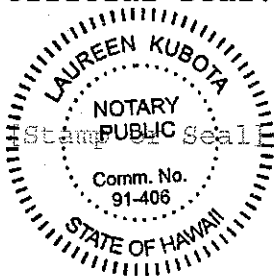
Date: 9/10/12

5

State Of Hawaii)
) SS.
COUNTY OF HONOLULU)

On this 27th day of August, 2012, before me personally appeared JAY W. FREDHOLM, 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.



Lauren Kubota
Notary Public, State of Hawaii
Print Name: Lauren Kubota
My Commission Expires: 11-16-16

NOTARY PUBLIC CERTIFICATION

Doc. Date: 8/27/12 # Pages: 10
Notary Name: Lauren Kubota Judicial Circuit: 1st
Document Description: Unilateral
Agreement
Notary Signature: Lauren Kubota
Date: 8/27/12

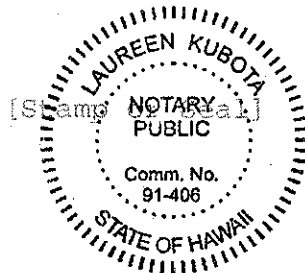


EXHIBIT 1

The land referred to in this policy is described as follows:

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Number 1242, Land Commission Award Number 615 to Ulunahale) situate, lying and being at Wananalua, District of Hana, Island and County of Maui, State of Hawaii, and thus bounded and described as per survey of James R. Thompson, Registered Professional Land Surveyor, dated July 27, 1989, to-wit:

Beginning at a pipe at the east corner of this parcel of land and at the west corner of the intersection of Uakea Road and Keanini Drive, the coordinates of said point of beginning referred to Government Survey Triangulation Station "KAHIKI" being 1,008.13 feet north and 1,432.15 feet west and thence running by azimuths measured clockwise from true South:

- | | | | | |
|----|------|---------|--------|--|
| 1. | 65° | 40' | 109.79 | feet along Keanini Drive and along Lot K being a portion of File Plan 866 to a pipe; |
| 2. | 148° | 50" | 395.39 | feet along Lots 66, 9, 12 and 14 of File Plan 1481 to a pipe; |
| 3. | 245° | 59' 30" | 110.00 | feet along Lot 14 of File Plan 1481 and along the remainder of R. P. 1242, L. C. Aw. 615 to Ulunahale to a pipe; |

EXHIBIT 1

SCHEDULE C CONTINUED

4. 328° 51' 10" 394.75 feet along the southerly side of Uakea Road to the point of beginning and containing an area of 0.989 acre, more or less.

BEING THE PREMISES ACQUIRED BY WARRANTY DEED

GRANTOR : BRUCE MORSE and DOROTHY MORSE, husband and wife
GRANTEE : MARK D. COLLINS, husband of Haunani Collins,
HAUNANI COLLINS, wife of Mark D. Collins and JAY
WILLIAM FREDHOLM, single, as Joint Tenants
DATED : May 21, 2007
RECORDED : Document No. 2007-094129

END OF EXHIBIT 1

EXHIBIT "2"

CONDITION OF ZONING

1. That a large-scale commercial fish processing operation shall be prohibited.