

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

September 4, 2015

**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 August 19, 2015, makes reference to County Communication 15-78, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII" ("District Boundary Amendment bill"). The purpose of the proposed bill is to grant a request from ABC Development Company, LLC for a District Boundary Amendment from Agricultural to Urban for 8.55 acres at 109 East Waiko Road, Wailuku, Maui, Hawaii, to facilitate the development of the proposed Waikapu Light Industrial Project, consisting of seven condominiumized lots ("project").
2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO LIGHT INDUSTRIAL FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII" ("Community Plan Amendment bill"). The purpose of the proposed bill is to grant a request from ABC Development Company, LLC for a Community Plan Amendment from Agriculture to Light Industrial for the subject property, to facilitate development of the project.
3. A proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT FOR PROPERTY SITUATED AT WAILUKU, MAUI, HAWAII" ("Change in Zoning bill"). The

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purpose of the proposed bill is to grant a request from ABC Development Company, LLC for a Change in Zoning from Agricultural District to M-1 Light Industrial District for the subject property, to facilitate development of the project.

According to the "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION August 26, 2014 Meeting" ("Department's Report"), the subject property was formerly used for sand mining and a scrap metal recovery facility. The property has undergone extensive site restoration activities in preparation for the proposed light industrial uses. The Department notes the subject property has not been used for agricultural cultivation since 1989, and, based on its low agricultural productivity rating, is not well-suited for agricultural use. The subject property is in the Maui Island Plan's Urban Growth Boundary.

A representative of the landowner said remedial actions taken at the subject property, from 2007 through 2014, enhance the environment and came at significant cost to the owner. Cleanup included the removal of scrap and metal debris and impacted soils to ensure the project site is free from adverse environmental hazards. Potential contaminant leaching hazards were also evaluated.

The Department's Report notes the Waiko Industrial Subdivision property is adjacent to the subject property, with the established Fong Construction Baseyard alongside of it. The report goes on to state, "There is an acute shortage of affordable commercial/warehouse/light industrial space on Maui." Therefore, the proposed land use entitlements would allow for uses compatible to the area and encourage uses that would fill a community need.

Your Committee notes the Council granted Waiko Industrial Investment, LLC a Community Plan Amendment from Agriculture to Light Industrial by Ordinance 4150 (2014), and a Change in Zoning from Agricultural District to M-1 Light Industrial District by Ordinance 4151 (2014). The land use entitlements were to facilitate the development of the proposed Waiko Baseyard Light Industrial Subdivision project, consisting of 41 lots on 31.2 acres on East Waiko Road, Wailuku. The Change in

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Zoning ordinance contains a condition to restrict uses on the property, so that B-1, B-2, and B-3 business district uses, excluding apartment houses, would be allowed on an 8.5-acre portion of the property, while the larger portion would accommodate any M-1 Light Industrial District use, except for apartment houses and uses permitted in the B-1, B-2, or B-3 business district.

According to Committee Report 14-92, relating to the Waiko Baseyard Light Industrial Subdivision project, "Your Committee noted the condition would retain traditional light industrial uses in the project, and disallow otherwise permissible commercial uses from overtaking the entire project area."

Your Committee also notes the Council granted Consolidated Baseyards LLC a Change in Zoning from Agricultural District to M-1 Light Industrial District by Ordinance 3322 (2005), with a condition restricting permitted uses. The zoning was to facilitate the development of a light industrial subdivision of up to 39 lots on the 23.164-acre property at 345 East Waiko Road, Wailuku.

According to Committee Report 05-129, relating to the Consolidated Baseyards LLC project, "The Planning Director noted that industrially zoned land developed for commercial use renders it no longer compatible with, or financially viable for, industrial purposes." He advised the Department recommended the project be restricted to light industrial uses due to the lack of such inventory, and cited concerns over placing residential units in an industrial area.

According to Section 19.24.010, Maui County Code, the M-1 Light Industrial District is "designed to contain mostly warehousing and distribution types of activity, and permits most compounding, assembly, or treatment of articles or materials with the exception of heavy manufacturing and processing of raw materials." The section further states, "Residential uses are excluded except for dwelling units located above or below the first floor and apartments."

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Under Section 19.24.020, Maui County Code, any use permitted in a B-1, B-2, or B-3 business district is allowed in the M-1 Light Industrial District, with certain exceptions relating to structures for dwelling purposes, except for dwelling units located above or below the first floor and apartments.

In evaluating the proposed project, your Committee noted concerns over retail uses generating increased traffic impacts on East Waiko Road, and potential hazards because of the angle of the road in the vicinity of the subject property and sight-distance issues.

To preserve the subject property's viability to address the shortage of affordable warehouse and traditional light-industrial space, and to mitigate traffic impacts, your Committee recommended a condition of zoning be incorporated to restrict the area within which B-1, B-2, or B-3 business district uses would be allowed to no more than 2.8 acres fronting East Waiko Road. The condition prohibits apartment houses on the entire parcel. At the owner's request, your Committee retained the ability to locate dwelling units above or below the first floor of a permitted use throughout the subject property.

Your Committee notes the project would implement the following General Plan goals, objectives, and policies:

- "Promote an economic climate that will encourage diversification of the County's economic base and a sustainable rate of economic growth." (Countywide Policy Plan, page 60.)
- "Support and promote locally produced products and locally owned operations and businesses that benefit local communities and meet local demand." (Countywide Policy Plan, page 60.)
- "Maui will have a balanced economy composed of a variety of industries that offer employment opportunities and well-paying jobs and a business environment that is sensitive to resident

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needs and the island's unique natural and cultural resources.”  
(Maui Island Plan, page 4-5.)

- “Ensure higher-density compact urban communities, infill, and redevelopment of underutilized urban lots within Urban Growth Boundaries.” (Maui Island Plan, page 7-24.)
- “Provide industrial growth opportunities through the expansion of existing industrial centers associated with the airport and harbor, and in Wailuku and Kahului. Encourage the fee simple ownership of lots provided by private developers.” (Wailuku-Kahului Community Plan, page 13.)

Your Committee was satisfied with the suitability of the subject property for the proposed entitlements.

Your Committee voted 6-0 to recommend passage of the proposed District Boundary Amendment bill and proposed Community Plan Amendment bill on first reading; passage of the proposed Change in Zoning bill, incorporating your Committee's revisions, on first reading; and filing of the communication. Committee Chair Carroll, Vice-Chair Victorino, and members Baisa, Couch, Crivello, and Guzman voted “aye.” Committee member Cochran was excused.

Your Committee is in receipt of a revised proposed District Boundary Amendment bill, entitled “A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT 109 EAST WAIKO ROAD, WAILUKU, MAUI, HAWAII, FOR THE PROPOSED WAIKAPU LIGHT INDUSTRIAL PROJECT,” and a revised proposed Community Plan Amendment bill, entitled “A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO LIGHT INDUSTRIAL FOR PROPERTY SITUATED AT 109 EAST WAIKO ROAD, WAILUKU, MAUI, HAWAII, FOR THE PROPOSED WAIKAPU LIGHT INDUSTRIAL PROJECT,” both approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

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Your Committee is also in receipt of a revised proposed Change in Zoning bill, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 109 EAST WAIKO ROAD, WAILUKU, MAUI, HAWAII, FOR THE PROPOSED WAIKAPU LIGHT INDUSTRIAL PROJECT," approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's revisions and nonsubstantive revisions.

Your Committee is also in receipt of an agreement entitled "Unilateral Agreement and Declaration for Conditional Zoning," executed by ABC Development Company, LLC, and approved as to form and legality by the Department of the Corporation Counsel.

Your Land Use Committee RECOMMENDS the following:

1. That Bill \_\_\_\_\_ (2015), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT 109 EAST WAIKO ROAD, WAILUKU, MAUI, HAWAII, FOR THE PROPOSED WAIKAPU LIGHT INDUSTRIAL PROJECT," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That Bill \_\_\_\_\_ (2015), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO LIGHT INDUSTRIAL FOR PROPERTY SITUATED AT 109 EAST WAIKO ROAD, WAILUKU, MAUI, HAWAII, FOR THE PROPOSED WAIKAPU LIGHT INDUSTRIAL PROJECT," be PASSED ON FIRST READING and be ORDERED TO PRINT;
3. That Bill \_\_\_\_\_ (2015), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-1 LIGHT

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INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR  
PROPERTY SITUATED AT 109 EAST WAIKO ROAD,  
WAILUKU, MAUI, HAWAII, FOR THE PROPOSED WAIKAPU  
LIGHT INDUSTRIAL PROJECT," be PASSED ON FIRST  
READING and be ORDERED TO PRINT;

4. That the County Clerk RECORD the unilateral agreement; and
5. That County Communication 15-78 be FILED.

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

  
\_\_\_\_\_  
ROBERT CARROLL, Chair

lu:cr:15008aa:cmn



ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2015)

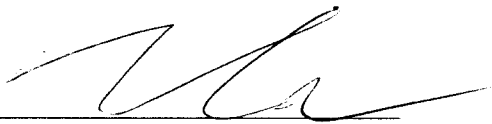
A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT 109 EAST WAIKO ROAD, WAILUKU, MAUI, HAWAII, FOR THE PROPOSED WAIKAPU LIGHT INDUSTRIAL PROJECT

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

SECTION 1. Pursuant to Section 205-3.1, Hawaii Revised Statutes, and Chapter 19.68, Maui County Code, the State Land Use District classification is reclassified from Agricultural to Urban for that certain parcel of land situated at Wailuku, Maui, Hawaii, and identified for real property tax purposes as tax map key (2) 3-8-007:105, consisting of approximately 8.55 acres, and more particularly described in Exhibit "A," attached hereto and made a part hereof, and in District Boundary Amendment Map DB-411, 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. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:



MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui

EXHIBIT "A"

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 3152 to Henry Cornwell) situate, lying and being at Waikapu, Island and County of Maui, State of Hawaii, being LOT 1-A of "KOPAA SUBDIVISION NO. 2", and thus bounded and described:

Beginning at the northwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 9,573.93 feet south, and 91.48 feet east, and thence running by azimuths measured clockwise from True South:

1. 201° 45' 273.59 feet along the remainder of Grant 3152 to Henry Cornwell;
2. 327° 14' 41" 1,104.45 feet along Lot 1-B of Kopaa Subdivision No. 2 and along the remainder of Grant 3152 to Henry Cornwell;
3. 118° 00' 102.66 feet along the northerly side of Waiko Road;
4. Thence along same, along a curve to the left with a radius of 1,080.00 feet, the chord azimuth and distance being:  
107° 15' 402.89 feet;
5. 96° 30' 340.00 feet along same;
6. Thence along same, along a curve to the right with a radius of 670.00 feet, the chord azimuth and distance being:  
102° 45' 145.86 feet;
7. 109° 00' 1.75 feet along same;
8. 216° 26' 292.52 feet along the H.C. & S.Co. - W.S.Co. compromise boundary along the remainder of Grant 3152 to Henry Cornwell to a pipe in concrete;
9. 196° 58' 80.00 feet along same to a pipe in concrete;
10. 183° 07' 159.90 feet along same to a pipe in concrete;
11. 151° 14' 30" 296.50 feet along same to the point of beginning and containing an area of 8.552 acres, more or less.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Easement "A", a 15 foot wide non-exclusive easement for water line purposes (being also a portion of Easements E and G granted to the County of Maui from Hawaiian Commercial and Sugar Company, Ltd. on September 19, 1961, recorded in Liber 4159 at Page 172), as set forth by instrument dated July 14, 1982, recorded in Liber 16472 at Page 616, and extending 7.50 feet on each side of the following described center line:  
  
Beginning at the northerly end of this easement on the northerly boundary of Lot 1-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 9,620.36 feet south and 314.72 feet east, and thence running by azimuths measured clockwise from true south:
  1. 327° 14' 41" 1,070.35 feet across Lot 1-A to its southerly boundary, and there terminating.
3. Minimum building setback line, 20 feet back, from the parallel with Courses 3, 4, 5, 6 and 7, as set forth in Lease recorded in Liber 16472 at Page 616.
4. Encroachments or any other matters as shown on survey map prepared by Kirk T. Tanaka, Land Surveyor, with R. T. Tanaka Engineers, Inc., dated January 3, 2007.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : THE HARRY AND JEANETTE WEINBERG FOUNDATION,  
INCORPORATED, a Maryland corporation

GRANTEE : HONOLULU LIMITED, a Maryland corporation

DATED : October 28, 1998

RECORDED : Document No. 98-163970

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2015)

A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI  
COMMUNITY PLAN AND LAND USE MAP FROM AGRICULTURE TO  
LIGHT INDUSTRIAL FOR PROPERTY SITUATED AT 109 EAST WAIKO ROAD,  
WAILUKU, MAUI, HAWAII, FOR THE PROPOSED WAIKAPU  
LIGHT INDUSTRIAL PROJECT

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

SECTION 1. Pursuant to Chapter 2.80B, Maui County Code, the Wailuku-Kahului Community Plan and Land Use Map is hereby amended from Agriculture to Light Industrial for property situated at Wailuku, Maui, Hawaii, and identified for real property tax purposes as tax map key (2) 3-8-007:105, consisting of approximately 8.55 acres, and more particularly described in Exhibit "A," attached hereto and made a part hereof, and in Community Plan Map CP-423, 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. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM  
AND LEGALITY:



MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui

EXHIBIT "A"

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 3152 to Henry Cornwell) situate, lying and being at Waikapu, Island and County of Maui, State of Hawaii, being LOT 1-A of "KOPAA SUBDIVISION NO. 2", and thus bounded and described:

Beginning at the northwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 9,573.93 feet south, and 91.48 feet east, and thence running by azimuths measured clockwise from True South:

1. 201° 45' 273.59 feet along the remainder of Grant 3152 to Henry Cornwell;
2. 327° 14' 41" 1,104.45 feet along Lot 1-B of Kopaa Subdivision No. 2 and along the remainder of Grant 3152 to Henry Cornwell;
3. 110° 00' 702.66 feet along the northerly side of Waiko Road;
4. Thence along same, along a curve to the left with a radius of 1,080.00 feet, the chord azimuth and distance being:  
107° 15' 402.89 feet;
5. 96° 30' 340.00 feet along same;
6. Thence along same, along a curve to the right with a radius of 670.00 feet, the chord azimuth and distance being:  
102° 45' 145.86 feet;
7. 109° 00' 1.75 feet along same;
8. 216° 26' 292.52 feet along the H.C.65.Co. - W.S.Co. compromise boundary along the remainder of Grant 3152 to Henry Cornwell to a pipe in concrete;
9. 196° 50' 80.00 feet along same to a pipe in concrete;
10. 183° 07' 159.90 feet along same to a pipe in concrete;
11. 151° 14' 30" 296.90 feet along same to the point of beginning and containing an area of 8.552 acres, more or less.

SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Easement "A", a 15 foot wide non-exclusive easement for water line purposes (being also a portion of Easements E and G granted to the County of Maui from Hawaiian Commercial and Sugar Company, Ltd. on September 19, 1961, recorded in Liber 4159 at Page 1721, as set forth by instrument dated July 10, 1982, recorded in Liber 16472 at Page 616, and extending 7.50 feet on each side of the following described center line:  
  
Beginning at the northerly end of this easement on the northerly boundary of Lot 1-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LOKE" being 9,620.36 feet south and 314.72 feet east, and thence running by azimuths measured clockwise from true south:
  1. 327° 14' 41" 1,078.35 feet across Lot 1-A to its southerly boundary, and there terminating.
3. Minimum building setback line, 20 feet back, from the parallel with Courses 3, 4, 5, 6 and 7, as set forth in Lease recorded in Liber 16472 at Page 616.
4. Encroachments or any other matters as shown on survey map prepared by Kirk T. Tanaka, Land Surveyor, with R. T. Tanaka Engineers, Inc., dated January 3, 2007.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : THE HARRY AND JEANETTE WEINBERG FOUNDATION,  
INCORPORATED, a Maryland corporation

GRANTEE : HONOLULU LIMITED, a Maryland corporation

DATED : October 28, 1998

RECORDED : Document No. 98-163970

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2015)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 109 EAST WAIKO ROAD, WAILUKU, MAUI, HAWAII, FOR THE PROPOSED WAIKAPU LIGHT INDUSTRIAL PROJECT

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

SECTION 1. Pursuant to Chapters 19.24 and 19.510, Maui County Code, a Change in Zoning from Agricultural District to M-1 Light Industrial District (Conditional Zoning) is hereby granted for that certain parcel of land situated at Wailuku, Maui, Hawaii, and identified for real property tax purposes as tax map key (2) 3-8-007:105, consisting of approximately 8.55 acres, and more particularly described in Exhibit "A," attached hereto and made a part hereof, and in Land Zoning Map L-2703, 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 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:



MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui

lu:misc:008acizbill01

EXHIBIT "A"

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 3152 to Henry Cornwell) situate, lying and being at Waikapu, Island and County of Maui, State of Hawaii, being LOT 1-A of "KOPAA SUBDIVISION NO. 2", and thus bounded and described:

Beginning at the northwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 9,573.93 feet south, and 91.48 feet east, and thence running by azimuths measured clockwise from True South:

1. 261° 45' 273.59 feet along the remainder of Grant 3152 to Henry Cornwell;
2. 327° 14' 41" 1,104.45 feet along Lot 1-B of Kopaa Subdivision No. 2 and along the remainder of Grant 3152 to Henry Cornwell;
3. 118° 00' 102.66 feet along the northerly side of Waiko Road;
4. Thence along same, along a curve to the left with a radius of 1,000.00 feet, the chord azimuth and distance being:  
107° 15' 402.89 feet;
5. 96° 30' 340.00 feet along same;
6. Thence along same, along a curve to the right with a radius of 670.00 feet, the chord azimuth and distance being:  
102° 45' 145.06 feet;
7. 109° 00' 1.75 feet along same;
8. 216° 26' 292.52 feet along the H.C.&S.Co. - W.S.Co. compromise boundary along the remainder of Grant 3152 to Henry Cornwell to a pipe in concrete;
9. 196° 50' 80.00 feet along same to a pipe in concrete;
10. 183° 07' 159.90 feet along same to a pipe in concrete;
11. 151° 14' 30" 296.98 feet along same to the point of beginning and containing an area of 8.552 acres, more or less.



SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
2. Easement "A", a 15 foot wide non-exclusive easement for water line purposes (being also a portion of Easements E and G granted to the County of Maui from Hawaiian Commercial and Sugar Company, Ltd. on September 19, 1961, recorded in Liber 4159 at Page 172), as set forth by Instrument dated July 14, 1982, recorded in Liber 16472 at Page 616, and extending 7.50 feet on each side of the following described center line:

Beginning at the northerly end of this easement on the northerly boundary of Lot 1-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 9,620.36 feet south and 314.72 feet east, and thence running by azimuths measured clockwise from true south:

1.  $327^{\circ} 14' 41''$  1,078.35 feet across Lot 1-A to its southerly boundary, and there terminating.

3. Minimum building setback line, 20 feet back, from the parallel with Courses 3, 4, 5, 6 and 7, as set forth in Lease recorded in Liber 16472 at Page 616.
4. Encroachments or any other matters as shown on survey map prepared by Kirk T. Tanaka, Land Surveyor, with R. T. Tanaka Engineers, Inc., dated January 3, 2007.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : THE HARRY AND JEANETTE WEINBERG FOUNDATION,  
INCORPORATED, a Maryland corporation

GRANTEE : HONOLULU LIMITED, a Maryland corporation

DATED : October 28, 1998

RECORDED : Document No. 98-163970

## EXHIBIT "B"

### CONDITION OF ZONING

1. Any use permitted in the M-1 Light Industrial District, excluding apartment houses, shall be permitted on no more than 2.8 acres fronting East Waiko Road. For the remainder of the subject property, any use permitted in the M-1 Light Industrial District, excluding uses permitted in the B-1 Neighborhood Business District, B-2 Community Business District, or B-3 Central Business District, and excluding apartment houses, shall be permitted, except that dwelling units may be located above or below the first floor of a permitted use.

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)3-8-007:105

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 21 day of August 2015, by ABC Development Company, LLC, whose principal place of business is located in Honolulu, O`ahu, Hawai`i, and whose mailing address is 815A Waiakamilo Road, Honolulu, Hawai`i 96817, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Waikapu, Maui, Hawai`i, comprised of approximately 8.55 acres, and identified for real property tax purposes by Tax Map Key No(s). (2)3-8-007:105, 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 8.55 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-2703, which is on file in the Office of the County Clerk of the County of Maui; and

**EXHIBIT "C"**

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 M-1 Light Industrial 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:  
ABC Development Company, LLC

  
\_\_\_\_\_  
Albert V. Kanno  
Manager

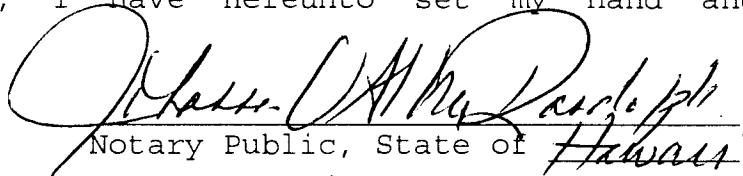
APPROVED AS TO FORM AND LEGALITY:

  
\_\_\_\_\_  
RICHELLE M. THOMSON  
Deputy Corporation Counsel  
County of Maui

STATE OF Hawaii )  
City & County of Honolulu ) SS.

On this 21<sup>ST</sup> day of August, 2015, before me personally appeared Albert Y. Kanno, 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: Johanna O. Ah-Nee-Randolph

My Commission Expires: 11/28/2016

LS

<u>NOTARY PUBLIC CERTIFICATION</u>	
Doc. Date: <u>8/21/15</u>	# Pages: <u>8</u>
Notary Name: <u>Johanna O. Ah-Nee-Randolph</u>	Judicial Circuit: <u>1<sup>ST</sup></u>
Document Description: <u>Unilateral Agreement and Declaration for Conditional Zoning</u>	
Notary Signature: <u>Johanna O. Ah-Nee-Randolph</u>	<u>LS</u>
Date: <u>8/21/15</u>	

**EXHIBIT "1"**

All of that certain parcel of land (being portion of the land(s) described in and covered by Royal Patent Grant Number 3152 to Henry Cornwell) situate, lying and being at Waikapu, Island and County of Maui, State of Hawaii, being LOT 1-A of "KOPAA SUBDIVISION NO. 2", and thus bounded and described:

Beginning at the northwesterly corner of this lot, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 9,573.93 feet south, and 91.48 feet east, and thence running by azimuths measured clockwise from true South:

1. 281° 45' 273.59 feet along the remainder of Grant 3152 to Henry Cornwell;
2. 327° 14' 41" 1,104.45 feet along Lot 1-B of Kopaa Subdivision No. 2 and along the remainder of Grant 3152 to Henry Cornwell;
3. 118° 00' 102.66 feet along the northerly side of Waiko Road;
4. Thence along same, along a curve to the left with a radius of 1,080.00 feet, the chord azimuth and distance being:
  - 107° 15' 402.89 feet;
5. 96° 30' 340.00 feet along same;
6. Thence along same, along a curve to the right with a radius of 670.00 feet, the chord azimuth and distance being:
  - 102° 45' 145.88 feet;
7. 109° 00' 1.25 feet along same;
8. 216° 26' 292.52 feet along the H.C.&S.Co. - W.S.Co. compromise boundary along the remainder of Grant 3152 to Henry Cornwell to a pipe in concrete;
9. 196° 58' 80.80 feet along same to a pipe in concrete;
10. 183° 07' 159.90 feet along same to a pipe in concrete;
11. 157° 14' 30" 296.58 feet along same to the point of beginning and containing an area of 8.552 acres, more or less.



SUBJECT, HOWEVER, to the following:

1. Reservation in favor of the State of Hawaii of all mineral and metallic mines.
  
2. Easement "A", a 15 foot wide non-exclusive easement for water line purposes (being also a portion of Easements F and G granted to the County of Maui from Hawaiian Commercial and Sugar Company, Ltd. on September 19, 1961, recorded in Liber 4159 at Page 172), as set forth by instrument dated July 14, 1982, recorded in Liber 16472 at Page 616, and extending 7.50 feet on each side of the following described center line:  
  
Beginning at the northerly end of this easement on the northerly boundary of Lot 1-A, the coordinates of said point of beginning referred to Government Survey Triangulation Station "LUKE" being 9,620.36 feet south and 314.72 feet east, and thence running by azimuths measured clockwise from true south:
  1. 127° 14' 41" 1,078.35 feet across Lot 1-A to its southerly boundary, and there terminating.
  
3. Minimum building setback line, 20 feet back, from the parallel with Courses 3, 4, 5, 6 and 7, as set forth in Lease recorded in Liber 16472 at Page 616.
  
4. Encroachments or any other matters as shown on survey map prepared by Kirk T. Tanaka, Land Surveyor, with R. T. Tanaka Engineers, Inc., dated January 3, 2007.

BEING THE PREMISES ACQUIRED BY DEED

GRANTOR : THE HARRY AND JEANETTE WEINBERG FOUNDATION,  
INCORPORATED, a Maryland corporation

GRANTEE : HONOLULU LIMITED, a Maryland corporation

DATED : October 28, 1998

RECORDED : Document No. 98-163970

## EXHIBIT "2"

### CONDITION OF ZONING

1. Any use permitted in the M-1 Light Industrial District, excluding apartment houses, shall be permitted on no more than 2.8 acres fronting East Waiko Road. For the remainder of the subject property, any use permitted in the M-1 Light Industrial District, excluding uses permitted in the B-1 Neighborhood Business District, B-2 Community Business District, or B-3 Central Business District, and excluding apartment houses, shall be permitted, except that dwelling units may be located above or below the first floor of a permitted use.