

ORDINANCE NO. 3554

BILL NO. 22 (2008)

A BILL FOR AN ORDINANCE TO REPEAL ORDINANCE NO. 2171 (1992)
AND TO ESTABLISH KIHEI-MAKENA PROJECT DISTRICT 9 (WAILEA 670) ZONING
(CONDITIONAL ZONING), FOR APPROXIMATELY 670 ACRES SITUATED AT
PAEAHU, PALAUEA, KEAUHOU, MAUI, HAWAII

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


SECTION 1. Ordinance No. 2171 (1992) is hereby repealed in its entirety.

SECTION 2. Pursuant to Chapters 19.45 and 19.510, Maui County Code, Kihei-Makena Project District 9 (Wailea 670) zoning (conditional zoning) is hereby granted for those certain parcels of land located at Paeahu, Palauea, Keauhou, Maui, Hawaii, identified for real property tax purposes by Tax Map Key Nos. (2) 2-1-008:056 and (2) 2-1-008:071, comprising approximately 670 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-590, 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 3. Pursuant to Section 19.510.050, Maui County Code, the Kihei-Makena Project District 9 (Wailea 670) 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 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



JAMES A. GIROUX

Department of the Corporation Counsel
County of Maui

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EXHIBIT "B"

Conditions of Zoning

1. That Honua`ula Partners, LLC, its successors and permitted assigns, shall, at their own cost and expense, develop, maintain, and operate, or cause to be developed, maintained, and operated, a private water source, storage facilities, and transmission lines for the Wailea 670 project in accordance with Department of Water Supply standards and all applicable community plans. Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with all reporting requirements of the State Commission on Water Resource Management.

In addition, Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with applicable water ordinances that pertain to the supply and transmission of water from the island of Maui when such ordinances are enacted.

At the time the project water system is completed, Honua`ula Partners, LLC, its successors and permitted assigns, shall offer to the County the right to purchase the project water system at the cost of development of such system.

The water rates for the residential workforce housing units shall be no higher than the general water consumer rates set by the County in its annual budget, for as long as the units are subject to Chapter 2.96, Maui County Code.

2. That Honua`ula Partners, LLC, its successors and permitted assigns, shall implement the following traffic improvements:
 - a. Upgrade Piilani Highway, from Kilohana Drive to Wailea Ike Drive, to four lanes of traffic. The improvements shall be completed prior to the commencement of any construction on the site, with the exception of grading.
 - b. Extend Piilani Highway for two lanes of traffic from Wailea Ike Drive to Kaukahi Street. The improvement shall be constructed at or prior to the completion of 50 percent of the project. Said improvement shall be maintained by Honua`ula Partners, LLC, its successors and permitted assigns.
 - c. Signalize the Piilani Highway/Okolani Drive/Mikioi Place intersection and provide an exclusive left-turn lane on Okolani Drive prior to occupancy of the first unit in Kihei-Makena Project District 9.
 - d. Modify the Piilani Highway/Wailea Ike Drive intersection into a signalized intersection and provide a free right-turn lane from Piilani Highway to Wailea Ike Drive and a second right-turn lane from

Wailea Ike Drive to northbound Piilani Highway prior to occupancy of the first unit in Kihei-Makena Project District 9.

- e. Modify the Wailea Alanui/Wailea Ike Drive intersection to add a signalized double right-turn movement from northbound to eastbound turning traffic and provide two left-turn lanes for southbound traffic from Wailea Ike Drive prior to occupancy of the first unit in Kihei-Makena Project District 9.
 - f. Modify the Piilani Highway/Kilohana Drive/Mapu Place intersection to provide an exclusive left-turn lane, and the southbound Piilani Highway approach to provide an exclusive right-turn lane into Mapu Place prior to occupancy of the first unit in Kihei-Makena Project District 9.
 - g. Signalize the Wailea Ike Drive/Kalai Waa Street intersection in coordination with Wailea Resort and Makena Resort when warranted.
 - h. Signalize the Wailea Alanui/Kaukahi Drive/Kaukahi Street intersection in coordination with Wailea Resort and Makena Resort when warranted.
3. That, as represented, Honua`ula Partners, LLC, its successors and permitted assigns, shall make a contribution to the County for traffic improvements in an amount equal to \$5,000 per unit. The contribution shall be paid to the County prior to issuance of a building permit. Upon adoption of a traffic impact fee ordinance, Honua`ula Partners, LLC, its successors and permitted assigns, shall comply with the ordinance in lieu of this voluntary contribution. Should a traffic impact fee ordinance be adopted prior to the collection of this contribution, the applicable amount shall be the greater of the two. Such contributions or fees shall not be a substitute for any other traffic infrastructure requirements related to the Change in Zoning.
4. That Honua`ula Partners, LLC, its successors and permitted assigns, shall be responsible for all required infrastructural improvements for the project, including water source and system improvements for potable and nonpotable use and fire protection, drainage improvements, traffic-related improvements, wastewater system improvements and utility upgrades, as determined by the appropriate governmental agencies and public utility companies. Except as otherwise provided by more specific conditions of zoning, said improvements shall be constructed and implemented concurrently with the development of each phase of Kihei-Makena Project District 9, and shall be completed prior to issuance of any certificate of occupancy or final subdivision approval, unless improvements are bonded by Honua`ula Partners, LLC, its successors and permitted assigns. Honua`ula Partners, LLC shall execute appropriate agreements with governmental agencies regarding participation in improvements of infrastructure and public facilities as determined by the agencies.

5. That Honua`ula Partners, LLC, its successors and permitted assigns, shall provide workforce housing in accordance with Chapter 2.96, Maui County Code (the "Residential Workforce Housing Policy"); provided that, 250 of the required workforce housing units shall be located at the Kaonoulu Light Industrial Subdivision and completed prior to any market-rate unit, that 125 of those workforce housing units shall be ownership units, and that 125 of those units shall be rental units. In addition, construction of those workforce housing units shall be commenced within two years, provided all necessary permits can be obtained within that timeframe. Honua`ula Partners, LLC, its successors and permitted assigns, shall provide a minimum two-acre park at the Kaonoulu Light Industrial Subdivision, which shall be credited toward the requirements of Section 18.16.320, Maui County Code, for that subdivision.
6. That a Drainage Master Plan and Phasing Plan of improvements shall be submitted for review and approval during Project District Phase II processing. Said plan shall include the recommended drainage improvements as represented in the Preliminary Drainage Report. The County may require periodic updates of the Drainage Master Plan and Phasing Plan.
7. That Honua`ula Partners, LLC, its successors and permitted assigns, shall prepare an animal management plan that shall be submitted during Project District Phase II processing and approved by the Department of Land and Natural Resources prior to submittal of Project District Phase III processing. Said plan shall include procedures for the management of animal intrusions including, but not limited to, construction of boundary or perimeter fencing, wildlife control permits, and rodent and feral cat control. Honua`ula Partners, LLC, its successors and permitted assigns, shall implement the approved animal management plan. The Department of Land and Natural Resources may require periodic updates of the plan.
8. That Honua`ula Partners, LLC, its successors and permitted assigns, shall inform owners within Kihei-Makena Project District 9 that the area is subject to the intrusion of mammals such as axis deer, pigs, and rodents, and the impacts and management plan associated with such intrusions.
9. That Honua`ula Partners, LLC, its successors and permitted assigns, shall prepare an assessment of the owl (Pueo or Hawaiian Short-eared Owl) and the Hawaiian Hoary Bat in coordination with the Department of Land and Natural Resources, and, if appropriate, mitigative measures shall be incorporated into Kihei-Makena Project District 9. Said assessment shall be prepared prior to submittal of Project District Phase II processing.
10. That, in lieu of the dedication of a Little League Field and related amenities as originally specified in Ordinance No. 2171 (1992), Exhibit "B", Condition No. 8, and based on current land and construction cost estimates for the Little League Field, not less than \$5,000,000 shall be paid to the County upon Project District

THE ORIGINAL OF THE DOCUMENT
RECORDED AS FOLLOWS:
STATE OF HAWAII

BUREAU OF CONVEYANCES

Doc 2008-036711
MAR 10, 2008 08:02 AM

LAND COURT

REGULAR SYSTEM

Return By Mail Pick-Up To:

Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai'i 96793

TITLE OF DOCUMENT:

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING
PARTIES TO DOCUMENT:

Declarant: **HONUA'ULA PARTNERS, LLC**
c/o Woodridge Capital, LLC
1999 Avenue of the Stars
Suite 2850
Los Angeles, California 90067

County of Maui: **COUNTY OF MAUI**
200 South High Street
Wailuku, Hawaii 96793

Kihei-Wailea Project District 9

TAX MAP KEY(S): (2) 2-1-08:056 and 071

(This document consists of 36 pages.)

EXHIBIT "C"

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: 36

Affects Tax Map Key (2) 2-1-08:056 and 071

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL
ZONING

THIS INDENTURE, made this 18 day of February 2008, by Honua'ula Partners, LLC, a Delaware limited liability company, whose principal place of business and mailing address is c/o Woodridge Capital, LLC, 1999 Avenue of the Stars, Suite 2850, Los Angeles, California 90067, hereinafter referred to as "DECLARANT", and who is the owner of that certain parcel located at Wailea, Maui, Hawai'i, comprised of approximately 669.387 acres, more or less, and identified for real property tax purposes by Tax Map Key No(s) 2-1-08:056 and 071, hereinafter referred to as "PARCEL".

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 669.387 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-590, 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. 08-23, 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 Kihei-Makena Project District 9 (Wailea 670) 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.

HONUA'ULA PARTNERS, LLC



By CHARLES JENCKS
Its Authorized Representative
DECLARANT

APPROVED AS TO FORM AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui


STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On March 6, 2008 before me, Linda D. Kauhane, Notary Public, personally appeared CHARLES JENCKS who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certified under PENALTY OF PERJURY under the laws of the State of Hawaii that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

DS.


Signature of Notary Public, Linda D. Kauhane
My Commission Expires: June 20, 2008

WE HEREBY CERTIFY that the foregoing BILL NO. 22 (2008)

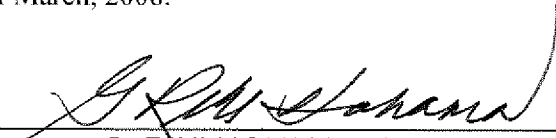
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 18th day of March, 2008, by the following vote:

G. Riki HOKAMA Chair	Dennis A. MATEO Vice-Chair	Michelle ANDERSON	Gladys C. BAISA	Jo Anne JOHNSON	William J. MEDEIROS	Michael J. MOLINA	Joseph PONTANILLA	Michael P. VICTORINO
No	Aye	No	Aye	No	No	Aye	Aye	Aye

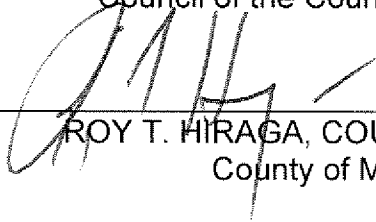
2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 24th day of March, 2008.

DATED AT WAILUKU, MAUI, HAWAII, this 24th day of March, 2008.

RECEIVED
2008 MAR 24 PM 2:02
OFFICE OF THE MAYOR



G. RIKI HOKAMA, CHAIR
Council of the County of Maui



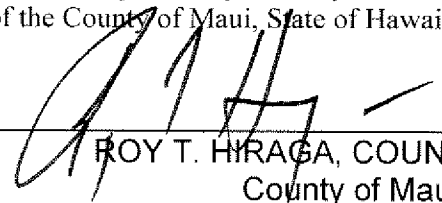
ROY T. HIRAGA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 8th DAY OF APRIL, 2008.



CHARMAINE TAVARES, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3554 of the County of Maui, State of Hawaii.



ROY T. HIRAGA, COUNTY CLERK
County of Maui

Passed First Reading on February 8, 2008.
Effective date of Ordinance April 8, 2008.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3554, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

RECEIVED
2008 APR -8 PM 4:20
OFFICE OF THE
COUNTY CLERK