

ORDINANCE NO. 2772

BILL NO. 27 (1999)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM  
THE AGRICULTURAL DISTRICT TO THE M-1 LIGHT INDUSTRIAL  
DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED  
AT KAONOULU, MAKAWAO-WAILUKU, MAUI, HAWAII

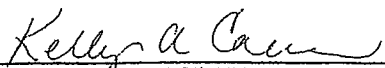
BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.510, Maui County Code, a change in zoning from the Agricultural District to the M-1 Light Industrial District is hereby granted for property situated at Kaonoulu, Makawao-Wailuku, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Nos. 3-9-1:16 and 2-2-02:portion of 15, comprised of approximately 88 Acres, and as more particularly described in Exhibit "A", which is attached hereto and made a part hereof, and by Land Zoning Map No. L-573, 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", which is attached hereto and made a part hereof, and the Unilateral Agreement and Declaration for Conditional Zoning, which is 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:

  
KELLY A. CAIRNS  
Deputy Corporation Counsel  
County of Maui

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STATE OF HAWAII  
LAND USE COMMISSION

EXHIBIT "N"

"EXHIBIT A"

**KAONOULU INDUSTRIAL PARK  
Description of Perimeter Boundary**

Land situated on the easterly side of the Piilani Highway (F.A.P. Number RF-031-1(5)) at Kaonoulu, Makawao-Wailuku, Maui, Hawaii

Being a portion of Royal Patent 7447, Land Commission Award 3237 Part 2 to H. Hewahewa, Certificate of Boundaries No. 56

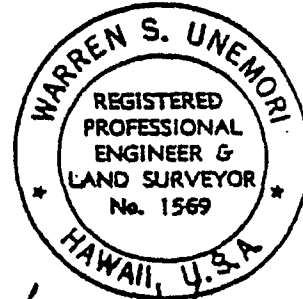
Beginning at a point at the southwesterly corner of this parcel of land, the coordinates of said point of beginning referred to Government Survey Triangulation Station "PUU-O-KALI" being 12,410.49 feet North and 21,916.43 feet West and running by azimuths measured clockwise from True South:

1. 166° 48' 805.00 feet along the easterly side of Piilani Highway (F.A.P. Number RF-031-1(5)) to a point;
2. 256° 48' 50.00 feet along same to a point;
3. 166° 48' 120.00 feet along same to a point;
4. 76° 48' 25.00 feet along same to a point;
5. 166° 48' 1,365.55 feet along same to a point;
6. 97° 30' 26.72 feet along same to a point;
7. 166° 48' 64.27 feet along same to a point;
8. 270° 04' 30" 1,766.86 feet along the Waiakoa-Kaonoulu Boundary, being also along Grant 11400 to Ernest K. Naeole to a point;
9. 344° 25' 1,722.13 feet along the remainder of Royal Patent 7447, Land Commission Award 3237 Part 2 to H. Hewahewa, Certificate of Boundaries No. 56, to a point;
10. Thence along same on a curve to the right having a radius of 346.00 feet, the chord azimuth and distance being:  
35° 12' 536.13 feet to a point;

- |     |         |  |
|-----|---------|--|
| 11. | 85° 59' | 280.13 feet along same to a point;   |
| 12. | 83° 30' | 300.00 feet along same to a point;   |
| 13. | 80° 58' | 379.00 feet along same to a point;   |
| 14. | 78° 19' | 408.00 feet along same to a point;   |
| 15. | 76° 48' | 30.00 feet along same to the point of<br>beginning and containing an<br>Area of 88.00 acres. |

SUBJECT, HOWEVER to the following:

1. A restriction of vehicle access rights along Piilani Highway.
2. A portion of Existing Waterline Easement No. 1 Central Maui Water Transmission System in favor of the Department of Water Supply, County of Maui.



*Warren S. Unemori*

Registered Land Surveyor  
Certificate No. 1569, ES

EXHIBIT "B"

CONDITIONS

1. That the applicant shall participate in intersection improvements, which includes but is not limited to, traffic signals and turning lanes to the satisfaction of the Department of Transportation (DOT). The applicant is encouraged to explore opportunities of cost share arrangements with adjacent developers.
2. That water conservation measures shall be incorporated into the design and operations of the industrial project.
3. That the applicant shall design its landscape irrigation system to accommodate future connection to the County's effluent reuse system.
4. That the design guidelines for this project be reviewed by the Planning Department.

THE ORIGINAL OF THE DOCUMENT  
RECORDED AS FOLLOWS  
STATE OF HAWAII

BUREAU OF CONVEYANCES  
APR 27 1999  
DATE.....  
DOCUMENT NO. 99-065049

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail  Pickup  To:  
Office of the County Clerk  
County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

TITLE OF DOCUMENT:

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

PARTIES TO DOCUMENT:

Declarant: KAONOULU RANCH  
P. O. Box 390  
Kula, Maui, Hawaii 96790

County of Maui: County of Maui  
200 South High Street  
Wailuku, Maui, Hawaii 96793

Affects Tax Map Key: (2) 3-9-01:16 and 2-2-02: portion (This document consists of 8 pages.)  
of 15

**EXHIBIT "C"**

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this 1st day of April, 19 99, by KAONOULU RANCH, a Hawaii limited partnership, whose principal place of business is located in Kula, Maui, Hawaii, and whose mailing address is P. O. Box 390, Kula, Maui, Hawaii 96790, hereinafter referred to as "DECLARANT", and who is the owner of those certain parcels of land located at Kaonoulu, Makawao-Wailuku, Island and County of Maui, State of Hawaii, comprised of approximately 88 acres, and identified for real property tax purposes by Tax Map Key Nos. (2) 3-9-01:16 and 2-2-02: portion of 15, hereinafter referred to as "PARCEL",

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawaii, hereinafter referred to as "Council", is considering the establishment of zoning for the Parcel, comprised of approximately 88 acres, which is more particularly described in Exhibit "1", attached hereto and made a part hereof, and more particularly identified in Land Zoning Map No. 573, 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. 99-78, 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, hereinafter referred to as the "County", the Parcel, and all parts thereof, are and shall be held subject to 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 Hawaii, 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, 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 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 Hawaii;

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;

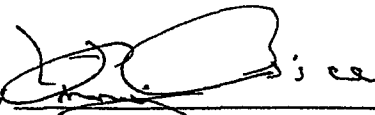
7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use.

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.

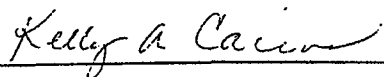
IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

DECLARANT:

KAONOULU RANCH

By  \_\_\_\_\_  
Type \_\_\_\_\_  
Name: Henry Rice  
Its Managing General Partner

APPROVED AS TO FORM AND LEGALITY:

 \_\_\_\_\_

Deputy Corporation Counsel  
County of Maui



STATE OF HAWAII )  
 ) SS.  
COUNTY OF MAUI )

On this 1st day of April, 1999, before me appeared HENRY RICE, to me personally known/proved to me on the basis of satisfactory evidence, who, being by me duly sworn, did say that he is the Managing General Partner of KAONOULU RANCH, a Hawaii limited partnership, and 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.

Mary E. Ah Sam  
Print/Type  
Name: Mary E. Ah Sam

Notary Public, State of Hawaii

My commission expires: 4/24/99

KAONOULU INDUSTRIAL PARK  
Description of Perimeter Boundary

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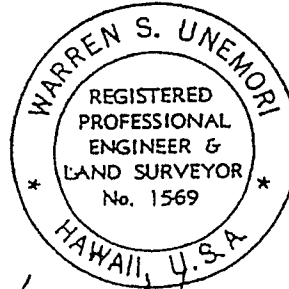
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- |     |         |             |   |
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*Warren S. Unemori*  
 \_\_\_\_\_  
 Registered Land Surveyor  
 Certificate No. 1569, ES

EXHIBIT "2"

Conditions

Pursuant to Section 19.510.050 of the Maui County Code, the zoning established for the Parcel described herein shall be subject to the following conditions:

1. That the Declarant shall participate in intersection improvements, which includes, but is not limited to traffic signals and turning lanes to the satisfaction of the Department of Transportation (DOT). The Declarant is encouraged to explore opportunities of cost share arrangements with adjacent developers.
2. That water conservation measures shall be incorporated into the design and operations of the industrial project.
3. That the Declarant shall design its landscape irrigation system to accommodate future connection to the County's effluent reuse system.
4. That the design guidelines for this project be reviewed by the Planning Department.

5027854.2.013212-3

WE HEREBY CERTIFY that the foregoing BILL NO. 27 (1999)


1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 21st day of May, 1999, by the following votes:

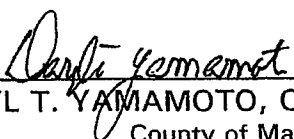
Patrick S. KAWANO Chair	Dain P. KANE Vice-Chair	Michael A. DAVIS	J. Kalani ENGLISH	John Wayne ENRIQUES	G. Riki HOKAMA	Dennis Y. NAKAMURA	Wayne K. NISHIKI	Charmaine TAVARES
Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 21st day of May, 1999.

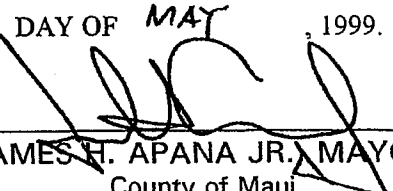
DATED AT WAILUKU, MAUI, HAWAII, this 21st day of May, 1999.

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MAY 25 1999

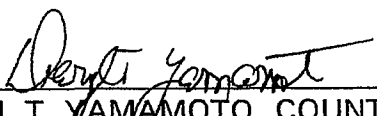
  
PATRICK S. KAWANO, CHAIR  
Council of the County of Maui

  
DARYL T. YAMAMOTO, COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 25 DAY OF MAY, 1999.

  
JAMES H. APANA JR., 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. 2772 of the County of Maui, State of Hawaii.

  
DARYL T. YAMAMOTO, COUNTY CLERK  
County of Maui

Passed First Reading on April 16, 1999.  
Effective date of Ordinance May 25, 1999.

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 2772, 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  
1999 MAY 25 AM 9:22  
CLERK OF THE  
COUNTY CLERK