

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

September 21, 2001

**Committee**  
**Report No.**

01-172

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

Chair and Members:

Your Land Use Committee, having met on September 4, 2001 and September 5, 2001, makes reference to County Communication No. 99-193, from the Planning Director, transmitting a draft bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM A-1 APARTMENT AND R-1 RESIDENTIAL DISTRICT TO B-2 COMMUNITY BUSINESS DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII" and other related documents.

The purpose of the draft bill is to change the zoning from A-1 Apartment and R-1 Residential Districts to B-2 Community Business District for approximately 5.17 acres of land located in Kihei, Maui, Hawai'i, identified for real property tax purposes as TMK: 3-9-001:157. The change in zoning would facilitate the development of a proposed commercial center ("the development") by Kenolio Ranch Estates Partners ("the developer"), a Hawai'i Limited Partnership comprised of General Partner Betsill Brothers Construction, Inc. and Limited Partner Paul L. Horikawa.

Your Committee notes that the Maui Planning Commission held a public hearing on the development on January 26, 1999. At the hearing, five individuals testified in favor of the development, and nine individuals testified in opposition. The matter was heard again on February 9, 1999. Eight individuals testified in opposition to the development. On June 1, 1999, the matter was heard again. Seven individuals testified in opposition to the development, two individuals testified in favor, and two individuals voiced concerns.

Your Committee further notes that the Maui Planning Commission, on June 1, 1999, voted to recommend approval of the requested change in zoning, subject to 12 conditions, after reviewing the findings presented in documents entitled "Maui Planning Department's Report for the Maui Planning Commission Meeting on January 26, 1999", "Maui Planning Department's Analysis Report for

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the Maui Planning Commission Meeting on January 26, 1999”, “Maui Planning Department’s Addendum Report for the Maui Planning Commission Meeting on June 1, 1999”, and “Maui Planning Department’s Addendum 2 Report for the Maui Planning Commission Meeting on June 1, 1999”.

Your Committee notes that the recommendation of the Maui Planning Commission was based upon the following findings:

1. The proposed request meets the intent of the general plan and the objectives and policies of the community plans of the County;
2. The proposed request is consistent with the applicable community plan land use map of the County;
3. The proposed request meets the intent and purpose of the district being requested;
4. The application, if granted, would not adversely affect or interfere with public or private schools, parks, playgrounds, water systems, sewage and solid waste disposal, drainage, roadway, and transportation systems, or other public requirements, conveniences and improvements; and
5. The application, if granted, would not adversely impact the social, cultural, economic, environmental, and ecological character and quality of the surrounding area.

Your Committee further notes that County Communication No. 99-193 was referred to the prior Council’s Land Use Committee at the Council meeting of July 16, 1999.

By memorandum dated July 22, 1999, the Council Chair transmitted a copy of a letter dated April 6, 1999, from Que Martyn, addressed to the Department of Planning, commenting on the development’s inconsistencies with the Kihei-Makena Community Plan.

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By memorandum dated August 3, 1999, the Council Chair transmitted a letter dated July 29, 1999, from the Planning Director, attaching the minutes of the June 1, 1999 Maui Planning Commission meeting.

By letter dated October 26, 1999, Richard Takase, Interstate Maui Realty, Inc., ("the developer's consultant") summarized the development.

By memorandum dated November 4, 1999, the Committee Chair transmitted a copy of a letter dated October 26, 1999, from the Director of Parks and Recreation, informing the developer's consultant that the County had rejected a proposed 7-acre parcel that was to be donated for park purposes as part of the development. The proposed donation was rejected because of its location in a large drainage system subject to flood water flows, ponding, and siltation, according to the letter.

By letter dated November 8, 1999, Patrick Ryan transmitted a chronology and related documents regarding the development.

By facsimile letter dated November 9, 1999, Eugene and June Yatsunoff expressed opposition to the draft bill.

By memorandum dated November 10, 1999, the Council Chair transmitted a facsimile letter dated November 9, 1999, from the developer's consultant, providing updated information about the development.

By facsimile letter dated November 12, 1999, Que Martyn responded to information previously provided to the Committee by the developer's consultant.

By facsimile letter dated November 12, 1999, Doyle G. Betsill, Jr., President, Betsill Brothers Construction, Inc., addressed concerns about the development.

By facsimile letter dated November 12, 1999, Que Martyn provided comments on the Traffic Impact Analysis Report dated April 1999.

At its site inspection of November 15, 1999, the Committee met with the Planning Director; a Staff Planner from the Department of Planning; the developer's consultant; Stacy Otomo, Otomo Engineering Inc. ("the developer's

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engineer”); and Doyle G. Betsill, Jr., President, Betsill Brothers Construction, Inc.

The Committee Chair noted that the applicants had denied public access to the property and that, therefore, the site inspection was being conducted on the public roadway fronting the subject property.

The developer’s consultant provided a brief description of the property boundaries. The entry to the development would be approximately 300 feet from Ka Ono Ulu Street, toward Makena. The development’s gas station would be located mauka, toward Piilani Highway and would serve as a buffer between the development’s other components (such as office space) and Kenolio Road.

The developer’s consultant also submitted three documents: (1) a letter transmitting a petition signed by 207 individuals supporting the draft bill; (2) a copy of a letter dated January 25, 1999, from attorney Paul L. Horikawa, opining that a “Declaration of Protective Covenants” proscribes commercial and industrial uses upon parcels of land located in the Ka Ono Ulu Estates subdivision (adjacent to the development); and (3) an outline of the development.

The Staff Planner gave a brief overview of the development and draft bill.

The Committee heard testimony from 15 individuals, two in favor of the draft bill and 13 in opposition. One of the testifiers opposed to the draft bill also submitted written testimony.

The Committee deferred consideration of the draft bill pending a meeting scheduled for that evening.

At its meeting of November 15, 1999 (in Kihei), the Committee met with the Planning Director; a Staff Planner from the Department of Planning; a Deputy Corporation Counsel; the Deputy Director of Public Works and Waste Management; the developer’s consultant; the developer’s engineer; and Doyle G. Betsill, Jr., President, Betsill Brothers Construction, Inc.

The Staff Planner gave a brief overview of the development and draft bill.

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The developer's consultant provided a brief presentation regarding the development, including information about covenants, self-imposed density limitations, parking, buffer zones, and drainage improvements.

The Committee heard testimony from 36 individuals, 16 in support of the draft bill and 20 in opposition. Three of the testifiers opposed to the draft bill provided written testimony, and another one provided a map of the subject property and the surrounding area. The testimony in support of the draft bill indicated that the development reflected well-conceived urban planning and that the development's mixed commercial uses would help to make the surrounding residential area "a complete neighborhood." The testimony in opposition to the draft bill indicated that the developer had not sought or received support for the development from nearby residents, that the development would disrupt the neighborhood's residential character, and that the development was an unneeded and undesirable "strip mall."

The Committee posed several questions relating to the developer's compliance with existing Special Management Area (SMA) permits issued by the Maui Planning Commission.

The Committee asked the developer's consultant and engineer to discuss proposed improvements that would impact drainage from the development and the flood plain. The developer's consultant and engineer displayed a map illustrating: (1) the existing flood plain; and (2) the flood plain after a section of the development is elevated with fill material.

The Committee asked the Deputy Corporation Counsel whether conditions on existing SMA permits would apply to the development. The Deputy Corporation Counsel informed the Committee that SMA permit conditions "run with the land" and would, therefore, apply to the development. The Committee requested that the Deputy Corporation Counsel examine the existing SMA permits and determine which conditions apply to the development.

The Committee deferred consideration of the draft bill pending further discussion.

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By letters dated November 22, 1999, the Committee requested that the Department of Planning and the Department of the Corporation Counsel provide information on all SMA permits applicable to the development.

By memorandum dated December 7, 1999, the Department of the Corporation Counsel requested additional time to respond to the Committee's letter dated November 22, 1999.

By letter dated January 27, 2000, the Department of Planning requested additional time to respond to the Committee's letter dated November 22, 1999, regarding SMA permits.

By letter dated March 2, 2000, the Department of Planning responded to the Committee's letter dated November 22, 1999. The Committee was provided copies of eight documents tracing the history of the development and the applicable SMA permits. The Department of Planning noted that there are still some outstanding issues pertaining to park dedication and affordable housing that were not fulfilled by the previous developer. The Committee was informed that the Department of Planning is responsible for enforcing SMA rules, and formal investigations are conducted of alleged violations. Possible penalties for violating the SMA rules include fines and the cessation of development activities, according to the Department of Planning.

By memorandum dated March 14, 2000, the Department of the Corporation Counsel responded to the Committee's letter dated November 22, 1999. The Committee was informed that SMA permit conditions do not normally "run with the land" and that such permits, therefore, apply only to the permit holder. If an SMA permit condition is to run with the land, the requestor is normally required to execute a unilateral agreement in favor of the County and recorded with the Bureau of Conveyances. If an SMA permit were allowed to lapse, it would no longer be effective. The Department of the Corporation Counsel provided a chronological history of the development and found that, although there was no specific expiration date given on the original SMA permit issued to the previous developer, the permit should be regarded as lapsed.

By memorandum dated March 28, 2000, the Council Chair transmitted a letter dated March 22, 2000, from the Planning Director, attaching a copy of a letter from attorney Paul L. Horikawa, noting that the developer is now Kenranes,

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Ltd., a Hawai'i Corporation, with the following officers: Doyle G. Betsill, Jr., President; Stephen Betsill, Vice-President and Secretary; and Randall Betsill, Treasurer.

By letter dated April 5, 2000, the developer's consultant requested that the Committee consider the draft bill.

By letter dated May 18, 2000, Michele N. Chouteau, Chouteau Consulting, on the developer's behalf, addressed the ownership and assets of Kenolio Ranch Estates Partners and Kenranes, Ltd. as they relate to the development.

By memorandum dated June 6, 2000, the Council Chair transmitted a letter dated June 2, 2000, from the Planning Director, transmitting a copy of the Warranty Deed evidencing the ownership of the subject property by Kenranes, Ltd.

By letter dated June 22, 2000, the developer's consultant requested that the Committee consider the draft bill.

By letter dated July 22, 2000, Patrick Ryan requested an evening meeting in Kihei on the draft bill.

By letter dated August 7, 2000, Doyle G. Betsill, Jr. ("the developer's president") transmitted a revised site plan for the development.

By facsimile letter dated August 7, 2000, Que Martyn commented on the revised site plan for the development.

By facsimile letter dated August 8, 2000, Que Martyn commented on a letter from the developer's president, dated August 2, 2000, to Ka Ono Ulu Estates homeowners.

By facsimile letter received on August 10, 2000, Que Martyn provided a copy of his letter dated August 9, 2000, addressed to the Department of Public Works and Waste Management, regarding an alleged conflict in the calculation of park credits for the development.

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By facsimile letter dated August 10, 2000, Richard and Julie A. Kiligian, expressed their opposition to the draft bill.

By memorandum dated August 11, 2000, the Council Chair attached a copy of a letter dated August 11, 2000, from Stewart and Yvonne Seldeen, opposing the draft bill.

By memorandum dated August 14, 2000, the Council Chair transmitted five letters in opposition to the draft bill.

By memorandum dated August 14, 2000, the Council Chair transmitted one facsimile letter dated August 12, 2000, from Sherryl Schussler and Ernestine Hedrich, in opposition.

At its meeting of August 14, 2000 (in Kihei), the Committee met with the Planning Director; a Staff Planner from the Department of Planning; the Director of Parks and Recreation; a Deputy Corporation Counsel; the Director of Public Works and Waste Management; the developer's engineer; Harrison Rue, Planner, Citizen Planner Institute, on behalf of the developer; Alan Y. Fujimori, Landscape Architect and Planner, Alan Y. Fujimori ASLA, on behalf of the developer; and the developer's president.

The Staff Planner provided a brief overview of the development, followed by a brief presentation by the developer's president, the developer's engineer, and Mr. Rue.

The Committee heard testimony from 30 individuals, 20 in favor of the draft bill, and ten in opposition. The Committee received written testimony from 6 individuals (including 2 verbal testifiers) in opposition to the draft bill. The testimony in support of the draft bill indicated that the development reflected well-conceived urban planning and that the development's mixed commercial uses would help to make the surrounding residential area "a complete neighborhood." The testimony in opposition to the draft bill indicated that the developer had not sought or received support for the development from nearby residents, that the development would disrupt the neighborhood's residential character, and that the development was an unneeded and undesirable "strip mall."

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The Committee discussed the possible sale of the subject property. The developer's president indicated that, even if the property were sold, an office for Betsill Brothers Construction, Inc. would still be located in one of the buildings on the property.

The Committee discussed the new site plan. Concern was expressed over the lack of review of the plan by any agencies. The developer's president indicated he had met with the community to inform individuals of the proposed changes.

The Committee discussed the feasibility of the development without a gas station. The developer's president indicated that the gas station was needed to make the development successful.

The Staff Planner informed the Committee of the criteria for granting a change in zoning. He also discussed the applicability of Subsection 19.510.040(B) of the Maui County Code, which provides in part:

In the case in which the owners or lessees of forty percent or more of the land located within a five-hundred-foot distance from the boundaries of the subject parcel have filed written protests, the ordinance which grants the application shall not become effective unless approved by a vote of seven members of the county council.

The Staff Planner noted that the developer owned much of the property surrounding the development. Therefore, although many of the homeowners in the Ka Ono Ulu Estates subdivision protested the proposed project, the opposition did not reach the 40 percent required to trigger the requirement of a super-majority Council vote.

The Committee also briefly discussed drainage and parking for the development.

The Committee discussed parks in the area. The Director of Parks and Recreation indicated that issues regarding park dedication for the development have not been resolved. He indicated that the area the applicant had proposed for park dedication was declined because it is in a flood area. The Staff Planner confirmed that a park was not a part of the current site plan and stated the park

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referred to by the Director of Parks and Recreation related to the park requirements imposed on developers of residential development.

The Committee expressed concern over community dissension regarding the development and the apparent hostility between the developer and residents of Ka Ono Ulu Estates.

The Committee rejected a motion to recommend filing the draft bill and deferred further consideration pending further discussion.

By memorandum dated August 16, 2000, the Council Chair transmitted a letter dated August 16, 2000, from Julie Kiligian, expressing disappointment over the Committee's rejection of the motion to recommend filing of the draft bill on August 14, 2000.

By letter dated August 31, 2000, the Committee requested that the Department of Planning review and analyze existing zoning for the subject property.

By letter dated September 22, 2000, the Department of Planning indicated that approximately 15 single-family residential lots and approximately 102 multi-family units could be developed at the subject property under existing zoning.

By memorandum dated October 30, 2000, the Council Chair transmitted a letter from Susan Moikeha, dated October 27, 2000, expressing opposition to the development.

By letter dated November 7, 2000, the developer's president transmitted information relating to a revised development proposal.

By facsimile letter received on November 14, 2000, Que Martyn provided a copy of a letter to the developer, dated November 14, 2000, requesting an opportunity to review the revised development proposal.

At its meeting of November 16, 2000, the Committee discussed the disposition of all items on its agenda.

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The Committee recommended that County Communication No. 99-193 be referred to the Council Chair for the term beginning January 2, 2001 for a recommendation as to referral or other disposition.

By memorandum dated November 16, 2000, the Council Chair transmitted an e-mail message dated November 15, 2000, from Erik M. Arensdorf, expressing opposition to the draft bill.

By memorandum dated November 20, 2000, the Council Chair transmitted a copy of a letter dated November 17, 2000, from Que Martyn, asking the Department of Planning whether the development's proposed park will be developed concurrently with the development's commercial elements.

By memorandum dated November 28, 2000, the Council Chair transmitted a copy of a letter dated November 28, 2000, from Que Martyn, addressed to Mediation Services of Maui, Inc., relating to a scheduling conflict for the proposed mediation meeting.

By memorandum dated November 30, 2000, the Council Chair transmitted a copy of a letter dated November 29, 2000, from Que Martyn, addressed to Mediation Services of Maui, Inc., relating to a mediation meeting between residents of Ka Ono Ulu Estates and the developer.

By letter dated December 19, 2000, the Planning Department submitted a follow-up response to the Committee's request of letter dated August 31, 2000.

At its meeting of January 12, 2001, the Council referred County Communication No. 99-193 to your Land Use Committee (County Communication No. 01-21).

By letter received on February 27, 2001, the developer's president requested that the draft bill be considered by your Committee.

By memorandum dated April 4, 2001, your Committee Chair transmitted an undated letter from Dee Larson, Executive Director, Montessori International Hawaii (MIH), expressing support for the draft bill.

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By memorandum dated May 8, 2001, the Chair of your Committee transmitted an undated e-mail message from Doyle G. Betsill, Jr., representing the developer, informing of mediation with the Ka Ono Ulu neighborhood residents.

By memorandum dated May 21, 2001, the Chair of your Committee transmitted a letter dated May 16, 2001, from Patrick Ryan, transmitting background information about the development and related community concerns.

By facsimile letter dated May 31, 2001, Que Martyn requested that the draft bill be scheduled for a meeting in Kihei.

By memorandum dated June 13, 2001, the Chair of your Committee transmitted a letter dated June 4, 2001, from Mediation Services of Maui, Inc., transmitting information relating to a facilitated meeting on May 21, 2001 involving representatives of the developer and members of the community opposed to the development.

By letters dated August 28, 2001, the Chair of your Committee requested that the following entities provide information about the impacts of the development: Department of Public Works and Waste Management; Department of Water Supply; State Department of Transportation; Maui Electric Company, Ltd.; and United States Fish and Wildlife Service.

By e-mail message dated August 31, 2001, Deputy Director of the State Department of Transportation (DOT) informed your Committee that DOT did not have enough information to respond to the August 28<sup>th</sup> request regarding the impacts of the development.

By letter dated August 31, 2001, the Director of Public Works and Waste Management informed your Committee that the development would have minimal impact on traffic congestion and no impact on wastewater capacity.

By memorandum dated September 4, 2001, the Chair of your Committee transmitted information about South Maui infrastructure that your Committee had previously compiled in conjunction with its consideration of another development.

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By memorandum dated September 4, 2001, the Chair of your Committee transmitted e-mail testimony dated September 4, 2001, from Stewart and Yvonne Seldeen, in opposition to the draft bill.

By memorandum dated September 4, 2001, the Chair of your Committee transmitted two e-mail testimonies dated September 4, 2001, from Zoe Miner and Tomas and Joan Heartfield, Ph. D.

At its meeting of September 4, 2001 (in Kihei), your Committee deferred consideration of the proposed bills without discussion and recessed until September 5, 2001. At the meeting, your Committee received written testimony from three individuals in opposition to the draft bill.

At its reconvened meeting of September 5, 2001, your Committee met with the Planning Director, the Deputy Director of Planning, Staff Planner from the Department of Planning, the Director of Public Works and Waste Management, and a Deputy Corporation Counsel.

The developer's president provided a computer-generated slide show exhibiting the background and status of the development. He described the development as exhibiting the principles of "smart growth" by providing a multi-use complex within walking distance of a residential neighborhood.

Susan Moikeha provided a computer-generated slide show providing commentary in opposition to the draft bill. She indicated that residents in the surrounding area were almost uniformly opposed to the development, that the developer had not sufficiently consulted with area residents, that the commercial aspects of the development were not currently needed, and that residents of the Ka Ono Ulu Estates subdivision had moved to their neighborhood with the expectation that it would retain its residential character.

Your Committee received testimony from 13 individuals in opposition to the draft bill and 8 in support. Your Committee also received written testimony in opposition to the draft bill from 10 individuals. The testimony in support of the draft bill indicated that the development reflected well-conceived urban planning and that the development's mixed commercial uses would help to make the surrounding residential area "a complete neighborhood." The testimony in opposition to the draft bill indicated that the developer had not sought or received

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support for the development from nearby residents, that the development would disrupt the neighborhood's residential character, and that the development was an unneeded and undesirable "strip mall."

Your Committee expressed its support for the developer's interest in creating a mixed-use development that would encourage pedestrian and bicycle transportation and for incorporating other "smart growth" principles. Your Committee noted, however, that community consensus is the most important element of smart growth. The prior Council's Land Use Committee deferred consideration of the draft bill last year to allow the developer to reach such consensus, according to your Committee. Based on the testimony and both slide-show presentations, your Committee concluded that the developer had not been successful in that regard. Therefore, your Committee voted to recommend filing of the communication.

In addition, your Committee noted that the recommended rejection of the change in zoning requested by the developer would leave the current zoning of the subject property inconsistent with the property's community plan designation. Therefore, your Committee voted to recommend that the matter of the community plan designation be referred to your Committee.

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

1. That the matter of the community plan designation of approximately 5.17 acres of land located in Kihei, Maui, Hawai'i, identified for real property tax purposes as TMK: 3-9-001:157, be REFERRED to the Land Use Committee for further consideration; and
2. That County Communication No. 99-193 be FILED.

Adoption of this report is respectfully requested.

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**ALAN M. ARAKAWA** **Chair**

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**DAIN P. KANE** **Member**

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**PATRICK S. KAWANO** **Vice-Chair**

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**MICHAEL J. MOLINA** **Member**

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**ROBERT CARROLL** **Member**

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**WAYNE K. NISHIKI** **Member**

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**G. RIKI HOKAMA** **Member**

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**CHARMAINE TAVARES** **Member**

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**JO ANNE JOHNSON** **Member**