

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

April 19, 2002

**Committee
Report No.**

02-55

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

Chair and Members:

Your Land Use Committee, having met on February 25, 2002, and March 11, 2002, makes reference to County Communication No. 01-309, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM BUSINESS/COMMERCIAL TO SINGLE-FAMILY FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII".

The purpose of the proposed bill is to approve a Community Plan Amendment from Business/Commercial to Single-Family, requested by Kealia Beach Plaza/Eagle Equity Hawaii, Inc., to develop a two-lot residential subdivision on approximately 46,859 square feet of land for property in Kihei (TMK: 3-8-013:012).

2. A draft bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM B-R RESORT COMMERCIAL DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII".

The purpose of the draft bill is to approve a Change in Zoning from B-R Resort Commercial District to R-3 Residential District, requested by Kealia Beach Plaza/Eagle Equity Hawaii, Inc., to develop a two-lot residential subdivision on approximately 46,859 square feet of land for property in Kihei (TMK: 3-8-013:012).

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Your Committee notes that the subject application originally requested a Community Plan Amendment to Hotel and a Change in Zoning to H-M Hotel District. Your Committee further notes that the Maui Planning Commission held a public hearing and meeting on the application for a Community Plan Amendment and Change in Zoning on September 25, 2001. At the hearing, 25 written and 5 oral testimonies were received. Most of the testimonies expressed opposition to the proposed hotel-oriented land-use designations for the subject property, which is located along the coastline in Kihei, just northwest of the intersection of Mokulele Highway and Piilani Highway, at 101 North Kihei Road.

Your Committee further notes that at its meeting, the Maui Planning Commission reviewed the findings presented in the documents entitled "REVISED RECOMMENDATION OF THE MAUI PLANNING COMMISSION SEPTEMBER 25, 2001 MEETING", "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION SEPTEMBER 25, 2001 MEETING", and "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION SEPTEMBER 25, 2001 MEETING", and voted to recommend approval of the application, as revised, to eliminate the proposed hotel-oriented designations and subject to the following conditions:

1. That within the shoreline setback area no structures shall be constructed. The shoreline setback shall be in accordance with the Shoreline Setback Rules of the Maui Planning Commission or based upon the mean annual erosion hazard rate of the shoreline fronting the subject property, whichever is greater.
2. That future owners of the property shall be advised of the following:
 - a. The shoreline fronting the subject property is identified as an erosion hotspot which has the potential to threaten shoreline development or infrastructure and the erosion rate has the potential to increase. When and if erosion moves the shoreline of the beach up to a structure, as erosion continues, the beach will be narrowed and eventually lost.

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- b. The owner is aware of the area's history of shoreline movement and potential for the erosion rate to increase, and the owner assumes any and all risks associated with such potential erosion.
 - c. The owner recognizes the natural shoreline process and acknowledges that no guarantees are given that seawalls, revetments, or other shoreline protection structures will be allowed.
3. That a beach access plan shall be submitted to the Maui Planning Commission for approval prior to final subdivision approval.
 4. That lateral shoreline access shall be established within the shoreline setback area. Said access shall be within 40 feet of the shoreline. Due to the seasonal changes of the shoreline and erosion hazard rates for the area, the owner recognizes that the lateral shoreline access may move within the property to ensure that the lateral shoreline access remains within 40 feet of the shoreline.
 5. That all exterior lighting shall be directed downward and shall follow the recommended guidelines of the Department of Land and Natural Resources, Division of Forestry and Wildlife to protect sea birds and sea turtles.

Your Committee further 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 will be consistent with the applicable community plan land use map of the County upon adoption of the requested Community Plan Amendment.

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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; provided conditions are included pursuant to Section 19.510.050 (Conditional zoning) of the Maui County Code.
5. The application, if granted, would not adversely impact the social cultural, economic, environmental, and ecological character and quality of the surrounding area; provided conditions are included pursuant to Section 19.510.050 (Conditional zoning) of the Maui County Code.

By correspondence dated January 25, 2002, the Council Chair transmitted a letter dated January 23, 2002, from the Planning Director, transmitting the minutes of the September 25, 2001 Maui Planning Commission meeting.

By correspondence dated February 22, 2002, Munekiyo & Hiraga, Inc., on the developer's behalf, transmitted booklets and a compact disk containing renditions of a computer-generated slide show on the proposed Community Plan Amendment and Change in Zoning.

At its meeting of February 25, 2002, your Committee deferred consideration of the developer's application without discussion.

At its meeting of March 11, 2002, your Committee met with the Planning Director; the Deputy Planning Director; a Deputy Corporation Counsel; and Eduardo F. "Ed" Bello of Bello Realty, Inc. and Gwen Ohashi Hiraga of Munekiyo & Hiraga, Inc., representing the developer.

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Ms. Hiraga presented a computer-generated slide show, providing an overview of the project that would be facilitated by the requested Community Plan Amendment and Change in Zoning. She provided the following information:

1. The developer is planning to create a two-lot Single-Family subdivision of 23,000 square feet per lot.
2. The property is bordered by the Kihei Sands Condominium on the west and a parcel with two Single-Family dwellings on the east. North Kihei Road is to the north of the property and a white sand beach and the Pacific Ocean are to the south.
3. The subject property is currently occupied by the Kealia Beach Plaza, a two-story commercial complex built in 1983. The property's existing B-R Resort Commercial zoning does not provide for Single-Family Residential use and is limited to businesses engaged in visitor-oriented commercial activities and services.
4. The existing commercial use will continue until the existing commercial complex is demolished.

Your Committee expressed concern about the proposed development's potential impact on the adjacent shoreline. The developer's representatives provided assurances that no action would be taken to threaten the shoreline's integrity or to increase the erosion rate.

Your Committee also expressed concern about the appropriateness of the proposed Single-Family Residential development in the area and noted its desire that short-term rentals not be conducted on the subject property.

In addition, your Committee expressed concern about ensuring an appropriate level of beach access for the public.

Your Committee voted to recommend the passage of the proposed bill and draft bill on first reading, subject to the following revisions:

1. Revise the proposed bill for a Community Plan Amendment by updating the reference date to 2002.

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2. Revise the draft bill for a Change in Zoning as follows:
 - a. Update the reference date to 2002.
 - b. Revise Condition No. 3 (Exhibit "B") to provide that the developer's beach access plan is subject to approval by the Council, instead of the Maui Planning Commission.
 - c. Add a new Condition No. 6 (Exhibit "B") to expressly state that short-term rentals shall not be permitted unless an appropriate Change in Zoning or permit is obtained.

Your Committee is in receipt of revised proposed bills, approved as to form and legality by the Department of the Corporation Counsel, incorporating the above-referenced revisions.

Your Committee is also in receipt of an agreement entitled "Unilateral Agreement and Declaration for Conditional Zoning" executed by the applicant.

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2002), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM BUSINESS/COMMERCIAL TO SINGLE-FAMILY FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII" PASS FIRST READING and BE ORDERED TO PRINT;
2. That Bill No. _____ (2002), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM B-R RESORT COMMERCIAL DISTRICT TO R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII" PASS FIRST READING and BE ORDERED TO PRINT; and
3. That the County Clerk RECORD the Unilateral Agreement and Declaration for Conditional Zoning.

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Adoption of this report is respectfully requested.

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