

**COUNCIL OF THE COUNTY OF MAUI**  
**PLANNING COMMITTEE**

March 4, 2011

**Committee**  
**Report No.** \_\_\_\_\_

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

Chair and Members:

Your Planning Committee, having met on February 14, 2011, makes reference to the following:

1. County Communication No. 11-28, from Council Chair Danny A. Mateo, transmitting correspondence dated January 5, 2011, from Don Fujimoto, Keaka LLC, submitting on behalf of Keaka LLC, a copy of a report entitled, "Annual Compliance Report, CHANGE IN ZONING CONDITIONS FOR MAKENA RESORT AREA". The report provides the current status of compliance with the conditions of zoning for the parcels owned by Keaka LLC in accordance with Condition No. 22 of Ordinance No. 3613 (2008).
2. County Communication No. 11-29, from Council Chair Danny A. Mateo, transmitting correspondence dated January 7, 2011, from Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., submitting on behalf of ATC Makena Holdings, LLC, a copy of a report entitled, "Annual Compliance Report, CHANGE IN ZONING CONDITIONS FOR MAKENA RESORT AREA". The report provides the current status of compliance with the conditions of zoning for the parcels owned by ATC Makena Holdings, LLC, in accordance with Condition No. 22 of Ordinance No. 3613 (2008).
3. County Communication No. 11-55, from Council Chair Danny A. Mateo, transmitting correspondence dated August 23, 2010, from Christopher Lau, foreclosure commissioner, providing notice of his intent to transfer certain parcels formerly owned by Makena Golf, LLC; by Makena Hotel, LLC; by Makena MF-2 & 3, LLC; and by Makena Resort Services LLC, in a foreclosure proceeding. The notice was required by Condition No. 21 of Ordinance No. 3613 (2008). The parcels were being transferred to ATC Makena Hotel LLC, ATC Makena S Golf LLC, ATC Makena N Golf LLC, ATC Makena Land MF3 LLC, ATC Makena Land

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MF4 LLC, ATC Makena Land C1 LLC, ATC Makena Land SF1 LLC,  
ATC Makena Land AH1 LLC, and ATC Makena Land U1 LLC  
(hereinafter referred to as “ATC Makena Holdings, LLC”).

Your Committee notes that Ordinance No. 3613 (2008) granted a change in zoning for various parcels, collectively comprising approximately 603 acres of the 756-acre Makena Resort Area, in order to implement the Kihei-Makena Community Plan and Makena Resort’s Master Plan. To mitigate the impacts of the Change in Zoning, the Council imposed 44 conditions addressing such issues as development restrictions, transportation requirements, protection of historical and cultural resources, monitoring of nearshore water quality, infrastructure requirements, access for parks and recreation, and preservation of native forests and species. Due to concerns that these conditions be regularly monitored for compliance, the Council required that an annual report be submitted, and further provided that the failure to fulfill any condition may result in the zoning reverting to a more appropriate designation.

Your Committee notes that Condition No. 21 of Ordinance No. 3613 (2008) provides that, “The developer shall give notice to the Department of Planning and the Council of any intent to sell, lease, assign, place in trust, or otherwise voluntarily alter the ownership interests in the Makena Resort Area, prior to any development.”

Your Committee further notes that Condition No. 22 of Ordinance No. 3613 (2008) provides that, “The developer shall provide timely annual compliance reports to the Planning Director and the Council. The compliance reports shall include: (a) the status of the developer’s compliance with each of these conditions; and (b) a reasonable estimate of the time needed for full compliance.”

A Planner from the Department of Planning explained that when a Special Management Area (SMA) permit request is submitted to the Department for any parcel affected by Ordinance No 3613 (2008), the Department will be responsible to ensure compliance with the conditions of zoning.

Representatives of Keaka LLC and ATC Makena Holdings, LLC, explained that the conditions of zoning in Ordinance No. 3613 (2008) relate to specific parcels. They informed your Committee that the annual compliance reports will identify which entity will comply with the zoning conditions as they relate to each parcel.

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According to the annual compliance report transmitted on behalf of ATC Makena Holdings, LLC, it has acquired a majority of the lands covered by Ordinance No. 3613 (2008). A representative informed your Committee that the developer will be requesting amendments to the zoning conditions at a later date.

Your Committee voted 7-0 to recommend filing of the communications. Committee Chair Couch, Vice-Chair Baisa, and members Mateo, Pontanilla, Cochran, Victorino, and White voted "aye".

Your Planning Committee RECOMMENDS the following:

1. That County Communication No. 11-28 be FILED;
2. That County Communication No. 11-29 be FILED; and
3. That County Communication No. 11-55 be FILED.

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

  
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DONALD G. COUCH, JR., Chair