

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

August 5, 2011

Committee
Report No. _____

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

Chair and Members:

Your Land Use Committee, having met on June 29, 2011, and July 13, 2011, makes reference to County Communication No. 09-103, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT MAKENA, KIHEI, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Pine State Limited for a District Boundary Amendment from Agricultural to Urban for a two-lot subdivision on approximately 1.395 acres located at Makena-Keoneoio Road, Makena, Maui, Hawaii (TMK: (2) 2-1-05:117) ("subject property").

The Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR TAX MAP KEY NUMBER (2) 2-1-005:117, MAKENA, KIHEI, MAUI, HAWAII" ("Urban bill"). The revised proposed bill identifies the parcel's tax map key number in the title of the bill.

Your Committee notes that the Maui Planning Commission recommended approval of the Urban bill with ten conditions.

Your Committee further notes that the prior Council's Land Use Committee considered this matter on August 18, 2010, and November 17, 2010.

During its meetings last year, the Committee discussed the possibility of changing the State Land Use District classification to Rural rather than Urban, because a Rural classification would be more compatible with surrounding uses. Representatives from the Department of Planning supported a Rural classification. The Committee requested an opinion from the Department of the Corporation Counsel as to the procedural options available to the Council in order to consider a Rural classification. The Department of the Corporation Counsel advised that if the Council desires to initiate a District Boundary

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Amendment to reclassify the subject property from Agricultural to Rural, the bill would first need to be reviewed by the Maui Planning Commission, pursuant to Section 8-8.6(2) of the Revised Charter of the County of Maui (1983), as amended (“Charter”), which requires the Council to seek the applicable planning commission’s recommendations prior to enacting a “land use ordinance”.

The Department of the Corporation Counsel subsequently transmitted a proposed resolution entitled “REFERRING TO THE MAUI PLANNING COMMISSION A DRAFT BILL TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR TAX MAP KEY NUMBER (2) 2-1-005:117, MAKENA, KIHEI, MAUI, HAWAII” (“Rural resolution”). The purpose of the proposed resolution is to refer a draft bill entitled “A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR TAX MAP KEY NUMBER (2) 2-1-005:117, MAKENA, KIHEI, MAUI, HAWAII” (“Rural bill”), to the Maui Planning Commission for review and recommendation. The purpose of the draft bill is to enact a District Boundary Amendment, changing the State Land Use District Classification from Agricultural to Rural for the subject property.

At its meetings this year, your Committee considered both the Rural resolution and the Urban bill. Your Committee revised the conditions contained in Exhibit “B” of the Rural bill to account for Hawaii’s Right to Farm Act and water-related concerns, to establish additional rural development standards, and to prohibit transient vacation rentals, bed and breakfast homes, and accessory dwellings.

Your Committee expressed concern about changing the State Land Use District Classification to Urban for a parcel surrounded by lands classified as Rural and Agricultural because it could lead to undesired urbanization in the area. Therefore, your Committee set aside the Urban bill and decided that the Council’s more prudent choice is to initiate passage of the Rural bill by adopting the Rural resolution.

Your Committee questioned the property owner’s ability to comply with the Rural bill’s Condition No. 10 relating to water conservation. The property owner’s representative indicated that his understanding of Condition No. 10 is that, although it would require the use of brackish or reclaimed water during construction, it would not prohibit the use of potable water for landscaping purposes. Your Committee requested that the Department of Planning ensure that the Maui Planning Commission specifically reviews and comments on Condition No. 10, among other elements of the Rural bill.

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Your Committee voted 7-0 to recommend adoption of the revised proposed Rural resolution. Committee Chair Carroll, Vice-Chair White, and members Baisa, Cochran, Couch, Pontanilla, and Victorino voted "aye". Committee members Hokama and Mateo were excused.

Your Committee is in receipt of a revised proposed resolution, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Land Use Committee RECOMMENDS that Resolution No. _____, as revised herein and attached hereto, entitled "REFERRING TO THE MAUI PLANNING COMMISSION A DRAFT BILL TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR TAX MAP KEY NUMBER (2) 2-1-005:117, MAKENA, KIHEI, MAUI, HAWAII", be ADOPTED.

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



ROBERT CARROLL, Chair

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Resolution

No. _____

REFERRING TO THE MAUI PLANNING COMMISSION A
DRAFT BILL TO AMEND THE STATE LAND USE
DISTRICT CLASSIFICATION FROM AGRICULTURAL
DISTRICT TO RURAL DISTRICT FOR
TAX MAP KEY NUMBER (2)2-1-005:117,
MAKENA, KIHEI, MAUI, HAWAII

WHEREAS, the Council is considering an amendment to the State Land Use District classification from Agricultural District to Rural District for property situated at Makena, Kihei, Maui, Hawaii, identified for real property tax purposes by Tax Map Key No. (2)2-1-005:117, comprising approximately 1.395 acres; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commission review proposed land use ordinances and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the draft bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL DISTRICT FOR TAX MAP KEY NUMBER (2)2-1-005:117, MAKENA, KIHEI, MAUI, HAWAII", a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Maui Planning Commission for appropriate action pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended; and
2. That it respectfully requests that the Maui Planning Commission transmit its findings and recommendations to the Council as expeditiously as possible; and

Resolution No. _____

3. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, and the Maui Planning Commission.

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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ORDINANCE NO. _____

BILL NO. _____ (2011)

A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE
DISTRICT CLASSIFICATION FROM AGRICULTURAL DISTRICT TO RURAL
DISTRICT FOR TAX MAP KEY NUMBER (2)2-1-005:117,
MAKENA, KIHEI, MAUI, HAWAII

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

SECTION 1. Pursuant to Chapter 205-3.1, Hawaii Revised Statutes, and Chapter 19.68, Maui County Code, the State Land Use District classification is reclassified from the Agricultural District to the Rural District for that certain parcel of land located at Makena, Kihei, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2)2-1-005:117, comprising approximately 1.395 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in District Boundary Amendment Map No. DB-518, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 2. Pursuant to Section 19.68.040, Maui County Code, the State Land Use District classification 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 of Conditions for State Land Use District Boundary Amendment, 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:

JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

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EXHIBIT " 1 "

EXHIBIT "A"

ALL of that certain parcel of land situate, lying and being on the easterly and mauka side of the Makana-Keoneoio Government Road at Mooloa, Honouliuli, District of Makawao, Island and County of Maui, State of Hawaii, being LOT 3 of the Partition of Grant 1476 to Kenul, and thus bounded and described as per survey of James Melmuth Brock, Registered Land Surveyor, with Brock and Associates, dated June 12, 1981, to-wit:

Beginning at a concrete monument with bronze disk marked "3218-13-82" on the easterly and mauka side of Makana-Keoneoio Government Road at the southwesternmost corner of this lot, a common corner with Lot 4 of this partition, the coordinates of said point of beginning being:

South 2,768.19 feet
East 1,775.60 feet

referred to Government Survey Triangulation Station "PUU OLAI" and running by azimuths measured clockwise from True South (meridian of said "PUU OLAI"; thence

- | | | | |
|----|--------------|--------|---|
| 1. | 164° 13' 30" | 35.39 | feet along the easterly and mauka side of Makana-Keoneoio Government Road to a ¼" iron bar; thence, |
| 2. | 171° 02' | 143.27 | feet along same to a concrete monument with bronze disk marked "3218-14-81"; thence, |
| 3. | 263° 13' 30" | 343.67 | feet along Lot 2 of this partition to a ¼" iron bar; thence, |
| 4. | 352° 21' 45" | 178.14 | feet along Lots 2 and 4 of this partition to a ¼" iron bar; thence, |
| 5. | 83° 13' 30" | 335.34 | feet along Lot 4 of this partition to the point of beginning and containing an area of 1.395 acres, more or less. |

Being all of the premises conveyed by QUITCLAIM DEED recorded July 12, 2005 as Regular System Document No. 2005-137170 of Official Records, from ROBERT B. RECTOR and MIRIAM TIENZO RECTOR, husband and wife as Grantor, to ROBERT B. RECTOR and MIRIAM T. RECTOR, as Trustees of The Robert B. Rector Trust of 1999 dated December 15, 1999 as Grantees.

SUBJECT, HOWEVER, to the following:

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. All customary and traditional rights, of native Hawaiians as provided for by law, for subsistence, cultural and religious purposes, which rights may involved access to the subject property.
3. Existing easement for electrical purposes in favor of M. E. Co., as shown on or disclosed by the Topographic survey Map dated November 1995, prepared by Sherman Dudley DePonte, Registered Professional Land Surveyor, as set forth or disclosed by the Quitclaim Deed recorded July 12, 2005 as Regular System Document No. 2005-137170 of Official Records.
4. Dirt Road, as shown on or disclosed by the Topographic survey Map dated November 1995, prepared by Sherman Dudley DePonte, Registered Professional Land Surveyor, as set forth or disclosed by the Quitclaim Deed recorded July 12, 2005 as Regular System Document No. 2005-137170 of Official Records.

END OF EXHIBIT "A"
Tax Map Key No. (2) 2-1-03-117

EXHIBIT "B"

CONDITIONS

1. That County RU-0.5 Rural District standards shall apply.
2. That building heights shall be limited to thirty (30) feet above natural or finish grade, whichever is lower.
3. That all pre-development and post-development run-off shall be retained by the owner onsite.
4. That no light shall be directed towards the makai side of the property towards the ocean.
5. That, in order to protect and preserve the traditional rural scale and character of existing portions of Makena-Keoneoio Road, as stated in the Kihei-Makena Community Plan, Pine State Limited shall construct improvements to Makena-Keoneoio Road fronting the project site in the following manner:
 - a. Pavement width shall be a minimum of twenty-two (22) feet;
 - b. Right-of-way width shall be a minimum of thirty-two (32) feet;
 - c. There shall be no curbs or gutters;
 - d. There shall be no sidewalks;
 - e. There shall be no street lights; and
 - f. Retaining walls abutting the right-of-way shall not exceed four (4) feet in height.

This condition shall exempt Pine State Limited from improving any portion of Makena-Keoneoio Road to urban standards.

6. That once the property has received final subdivision approval, the two (2) residential lots shall not be further subdivided and shall not be the subject of a condominium property regime.
7. That there shall be a prohibition on any action that would interfere with or restrain farming operations; provided the farming operations are conducted in a manner consistent with generally accepted agricultural and management practices on adjacent or contiguous lands in the agricultural district.
8. That there shall be notification to all prospective developers or purchasers of land or interest in land in the

petition area and subsequent notification to lessees or tenants of the land, that farming operations and practices on adjacent or contiguous land in the agricultural district are protected under Chapter 165, the Hawaii Right to Farm Act, and that the notice shall be included in any disclosure required for the sale or transfer of real property or any interest in real property.

9. That, at minimum, the following water conservation measures shall be incorporated: brackish and/or reclaimed water shall be used during construction and for other nonpotable purposes; low-flow fixtures; landscaping using xeriscaping; native plants; irrigated turf limited to 25 percent or less of the total landscape area; water-cooled systems in compliance with the Maui County Code; and water conservation through well-designed, efficient irrigation systems.
10. That the following pollution prevention measures shall be implemented: (1) prevent cement products, oil, fuel, and other toxic substances from falling or leaching into the water; (2) properly and promptly dispose of all loosened and excavated soil and debris material from drainage structure work; (3) retain ground cover until the last possible date; (4) stabilize denuded areas by sodding or planting as soon as possible; (5) avoid fertilizers and biocides, or apply them only during periods of low rainfall to minimize chemical run-off; and (6) keep run-off onsite.
11. That no transient vacation rentals or bed and breakfasts shall be permitted.
12. That no accessory dwellings (ohana units) shall be allowed.