

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

August 23, 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 August 3, 2011, makes reference to County Communication No. 09-105, from the Planning Director, transmitting documents relating to a request from `Iwa `Ike, LLC for a District Boundary Amendment from Agricultural to Urban to establish consistency with the property's community plan designation and zoning, and allow for the property to be subdivided into four rural residential lots. The property consists of 2.79 acres located at Makena-Keoneoio Road, Makena, Maui, Hawaii (TMK: (2) 2-1-05:118) ("subject property").

Your Committee notes that the Maui Planning Commission recommended denial of the request, and no proposed legislation was included in the communication. The Maui Planning Commission denied the request because the project provides no public benefit, could result in unwanted urbanization of the area, and may negatively impact environmentally and archaeologically sensitive sites.

Your Committee considered 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.

Your Committee noted that it had previously reviewed a similar request to amend the State Land Use District classification from Agricultural to Urban for an adjacent property. At that time, the Department of the Corporation Counsel advised that if your Committee decided to consider a Rural designation, a proposed bill to amend the State Land Use classification from Agricultural to Rural 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. Based on the advice of the Department of the Corporation Counsel, your Committee had recommended adoption of a resolution referring to the Maui Planning Commission a draft bill amending the State Land Use District classification from Agricultural to Rural (Resolution No. 11-77). Because of the proximity of the two properties, their similar procedural postures, and your Committee's desire to avoid unwanted urbanization of the area, your Committee requested that a similar resolution be prepared.

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

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Committee
Report No. _____

Your Committee is in receipt of a proposed resolution from the Department of the Corporation Counsel, 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) 2-1-005:118, MAKENA, KIHEI, MAUI, HAWAII". 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 DISTRICT TO RURAL DISTRICT FOR TAX MAP KEY NUMBER (2) 2-1-005:118, MAKENA, KIHEI, MAUI, HAWAII", to the Maui Planning Commission for review and recommendation.

The purpose of the draft bill is to change the State Land Use District classification from Agricultural to Rural for the subject property.

Your Committee voted 6-0 to recommend adoption of the proposed resolution. Committee Chair Carroll and members Baisa, Cochran, Couch, Hokama, and Pontanilla voted "aye". Committee Vice-Chair White and members Mateo and Victorino 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 nonsubstantive revisions.

Your Land Use Committee RECOMMENDS that Resolution No. _____, 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) 2-1-005:118, MAKENA, KIHEI, MAUI, HAWAII", be ADOPTED.

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



ROBERT CARROLL, Chair

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)2-1-005:118, 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)2-1-005:118, comprising approximately 2.79 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,

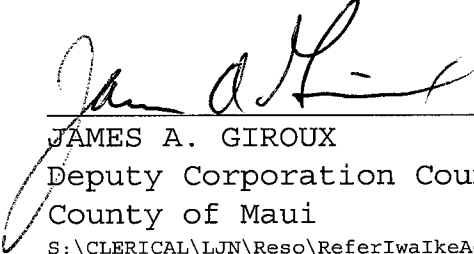
BE IT RESOLVED by the Council of the County of Maui:

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)2-1-005:118, 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)2-1-005:118,
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)2-1-005:118, comprising approximately 2.79 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in District Boundary Amendment Map No. DB-519, 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 known as Lot 4 of the Partition of Grant 1476 to Kenui, situate on the Easterly and Mauka side of the Makena-Keoneoio Government Road at Mooloa, Honuula, Makawao, Island and County of Maui, State of Hawaii, and more particularly described as follows:

Beginning at a concrete monument with bronze disk marked "3218-13-81" on the Easterly and mauka side of Makena-Keoneoio Government Road at the Westernmost corner of this lot, being also the Southwesternmost corner of Lot 3 of this Partition, the co-ordinates 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. 263° 13' 30" 335.34 feet along Lot 3 of this Partition to a 3/4" iron bar; thence,
2. 172° 21' 45" 89.14 feet along same to a 3/4" iron bar; thence,
3. 263° 13' 30" 330.00 feet along Lot 2 of this Partition to a concrete monument with bronze disk marked "3218-10-81"; thence,
4. 352° 21' 45" 209.31 feet along Grant 1479 to Paaluhi to a 3/4" iron bar; thence,
5. 78° 45' 334.45 feet along Lot 5 of this Partition to a 3/4" iron bar; thence,
6. 83° 13' 30" 329.85 feet along same to a 3/4" iron bar on the Easterly and Mauka side of Makena-Keoneoio Government Road; thence,
7. 178° 59' 74.82 feet along the Easterly and Mauka side of Makena-Keoneoio Government Road to a 3/4" iron bar; thence,

8. 164° 13' 30" 72.71 feet along same to the point of beginning and containing an area of 2.790 acres, more or less.

Being all the property described in Deed recorded January 19, 1996 in the Bureau of Conveyances of the State of Hawaii as Document No. 96-007557, from Kareem Abdul-Jabbar, unmarried, as Grantor, to the Grantor herein, as Grantee.

SUBJECT, HOWEVER, to the following:

1. Title to all minerals and metallic mines reserved to the State of Hawaii.

2. Grant in favor of Maui Electric Company, Limited and Hawaiian Telephone Company, now known as Hawaiian Telcom, Inc. dated June 24, 1981, recorded August 3, 1981 in the said Bureau of Conveyances in Liber 15735 on Page 91, granting a perpetual right and easement (10 feet wide) to build, construct, reconstruct, rebuild, repair, maintain and operate pole and wire lines and underground lines, etc., for the transmission of electricity over, across, through and under, the following described portion of the land described herein, as per survey of James Malmuth Brock, Registered Land Surveyor, dated June 12, 1981, to-wit:

Beginning at a concrete monument with bronze disk marked "3218-10-81" at the Northernmost corner of this lot, a common corner with Lot 2 of this Partition, the coordinates of said point of beginning being:

South 2,601.35 feet
East 2,424.45 feet

referred to Government Survey Triangulation Station "FUU OLAI" and running by azimuths measured clockwise from true South (meridian of said "FUU OLAI"); thence,

1. 352° 21' 45" 209.31 feet along Grant 1479 to Paaluhi to a 3/4" iron bar; thence,
2. 78° 45' 10.01 feet along Lot 5 of this Partition to a point; thence,
3. 172° 21' 45" 210.09 feet over and across this lot to a point; thence,

4. 263° 13' 30" 10.00 feet along Lot 2 of this Partition, to the point of beginning and containing an area of 2,096 feet, more or less.

3. Any unrecorded and subsisting leases.

4. Any rights, interests or claims which may exist or arise by reason of the facts shown on a survey plat prepared by Sherman Dudley DePonte, Licensed Professional Land Surveyor No. 6960, on May 19, 2007, designated as Job No. NONE, as follows:

(A) A water meter servicing other lots is onto subject parcel by as much as 13.1 x 18 feet.

END OF EXHIBIT "A"

Tax Key: (2) 2-1-005-118

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, `Iwa `Ike, LLC 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 `Iwa `Ike, LLC from improving any portion of Makena-Keoneoio Road to urban standards.
- 6 . That once the property has received final subdivision approval, the four (4) 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 (ohana units) shall be allowed.