

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

September 7, 2007

Committee
Report No.

07-95

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 1, 2007, makes reference to County Communication No. 07-92, 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 M-1 LIGHT INDUSTRIAL TO M-2 HEAVY INDUSTRIAL FOR PROPERTY SITUATED AT PUUNENE, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from S & F Land Co., Inc. (S&F) to amend the Kihei-Makena Community Plan from Light Industrial to Heavy Industrial for approximately 9.811 acres within the Central Maui Baseyard located in Puunene, Maui (TMK: (2) 3-8-05:001 (por.), also referenced as "Lot 1-C"), to accommodate heavy industrial uses, including the existing metal recycling facility.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM M-1 LIGHT INDUSTRIAL TO M-2 HEAVY INDUSTRIAL FOR PROPERTY SITUATED AT PUUNENE, MAUI, HAWAII".

The purpose of the proposed bill is to grant S&F's request to amend the Kihei-Makena Community Plan from Light Industrial to Heavy Industrial for approximately 58,091 square feet within the Central Maui Baseyard located in Puunene, Maui (TMK: (2) 3-8-05:001 (por.) and (2) 3-8-05:019 (por.), also referenced as "Lot 59"), to accommodate heavy industrial uses.

3. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM M-1 LIGHT INDUSTRIAL TO M-2 HEAVY INDUSTRIAL FOR PROPERTY SITUATED AT PUUNENE, MAUI, HAWAII".

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The purpose of the proposed bill is to grant S&F's request to amend the Kihei-Makena Community Plan from Light Industrial to Heavy Industrial for approximately 43,810 square feet within the Central Maui Baseyard located in Puunene, Maui (TMK: (2) 3-8-05:001 (por.), also referenced as "Lot 221"), to accommodate heavy industrial uses.

4. A proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-2 HEAVY INDUSTRIAL (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT PUUNENE, MAUI, HAWAII".

The purpose of the proposed bill is to grant S&F's request to change the zoning for the 9.811-acre property from Agricultural District to M-2 Heavy Industrial District, to accommodate heavy industrial uses.

5. A proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM M-1 LIGHT INDUSTRIAL TO M-2 HEAVY INDUSTRIAL (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT PUUNENE, MAUI, HAWAII".

The purpose of the proposed bill is to grant S&F's request to change the zoning for the 58,091-square-foot property from M-1 Light Industrial District to M-2 Heavy Industrial District, to accommodate heavy industrial uses.

6. A proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM M-1 LIGHT INDUSTRIAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT PUUNENE, MAUI, HAWAII".

The purpose of the proposed bill is to grant S&F's request to change the zoning for the 43,810-square-foot property from M-1 Light Industrial District to M-2 Heavy Industrial District, to accommodate heavy industrial uses.

Your Committee notes that the Maui Planning Commission held a public hearing on the application on November 14, 2006.

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Your Committee further notes that at its meeting of November 14, 2006, the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION NOVEMBER 14, 2006 MEETING" (Department's Report) and the conclusions presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION NOVEMBER 14, 2006 MEETING", voted to recommend approval of the Community Plan Amendments and Changes in Zoning.

By correspondence dated May 30, 2007, the Chair of your Committee transmitted a complete copy of Ordinance No. 2815 (1999). According to the Department's Report, at page 8, a Change in Zoning from Agricultural to M-1 Light Industrial was granted for "the 41 acres within the State Urban District" through this ordinance. Presumably, Lots 59 and 221 are contained within these 41 acres.

By correspondence dated May 30, 2007, the Chair of your Committee requested that the Planning Director respond whether it is appropriate for all three Change in Zoning bills to contain the identical conditions, when the stated intention of the Maui Planning Commission was to allow for a single restaurant only on the largest lot, and to specifically apply the landscape planting plan requirement to Lot 1-C only. The Chair also requested that the Planning Director provide a revised Land Zoning Map No. 5103, two copies of the Final Environmental Assessment, and a copy of the letters of authorization.

By correspondence dated May 30, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed bills as follows: (1) to correct the references to the Community Plan designations; (2) to distinguish the property at issue in the bill titles; (3) to address questions relating to the conditions contained in all three Change in Zoning bills; and (4) to incorporate nonsubstantive revisions.

By correspondence dated June 29, 2007, the Planning Director provided the requested documents; advised that Lots 59 and 221 are already subject to a landscape planting plan requirement under Ordinance No. 2815 (1999); and explained that Lot 1-C is the preferred site for the proposed restaurant and that the allowance for a restaurant should, therefore, be removed from the bills for the other two properties. The letter of authorization signed by Robert K. Sasaki, President, A&B Properties, Inc., states that

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S&F, the master lessee/master sublessor of the subject parcels, is authorized to apply for the referenced Community Plan Amendments and Changes in Zoning for the subject "Alexander and Baldwin, Inc." (A&B) lands.

By correspondence dated July 20, 2007, the Department of the Corporation Counsel transmitted the following revised proposed bills, incorporating the requested revisions:

1. "A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM LIGHT INDUSTRIAL TO HEAVY INDUSTRIAL FOR APPROXIMATELY 9.811 ACRES SITUATED AT PUUNENE, MAUI, HAWAII".
2. "A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM LIGHT INDUSTRIAL TO HEAVY INDUSTRIAL FOR APPROXIMATELY 58,091 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII".
3. "A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM LIGHT INDUSTRIAL TO HEAVY INDUSTRIAL FOR APPROXIMATELY 43,810 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII".
4. "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR APPROXIMATELY 9.811 ACRES SITUATED AT PUUNENE, MAUI, HAWAII".
5. "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM M-1 LIGHT INDUSTRIAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR APPROXIMATELY 58,091 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII".
6. "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM M-1 LIGHT INDUSTRIAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR APPROXIMATELY 43,810 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII".

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By correspondence dated July 23, 2007, the Chair of your Committee requested that the Planning Director provide a copy of S&F's responses to the commenting departments and agencies referenced in the Department's Report.

By correspondence dated July 30, 2007, the Chair of your Committee transmitted a printout of a computer-generated presentation entitled "Proposed Heavy Industrial Areas at the Central Maui Baseyard" received from Glenn Tadaki, Planner, Chris Hart & Partners, Inc.

By correspondence dated July 30, 2007, Glenn Tadaki, Planner, Chris Hart & Partners, Inc., transmitted S&F's responses to the commenting departments and agencies.

At its meeting, your Committee met with the Planning Program Administrator, Current Planning Division, Department of Planning; a Planner, Department of Planning; the Director of Environmental Management; the Deputy Director of Public Works; a Lieutenant, Department of Fire and Public Safety; a Deputy Corporation Counsel; C. Earl Stoner, Jr., President, S&F; Chris Hart, Chris Hart & Partners, Inc.; and Glenn Tadaki, Planner, Chris Hart & Partners, Inc.

There was no public testimony.

Mr. Tadaki provided a computer-generated presentation in which he described the site, the former and/or present uses of each of the three lots, the land use history of the Central Maui Baseyard, and S&F's reasons supporting the request. Of particular note, Mr. Tadaki advised that the lands underlying the baseyard have been used for industrial purposes since World War II.

The Planner provided the procedural history of the applications, and reviewed the conditions recommended by the Maui Planning Commission in addition to the revisions to the proposed bills.

Your Committee questioned whether employee housing had been considered a requirement of the industrial project. The Planning Program Administrator advised that employee housing had not been a topic of discussion.

The Deputy Corporation Counsel recommended that Condition No. 2 to the Change in Zoning bill for the 9.811-acre property be clarified to ensure that landscaping or vegetative buffers be continually maintained. Your Committee also discussed

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supplementing the condition to require that water conservation measures be incorporated in the landscape planting plan.

Your Committee discussed the fact that flammable vehicular fluids and sheet metal processing would be handled on the project site, and considered whether adequate fire flow is available. Your Committee noted the strong winds in the area and questioned whether a fire buffer around the perimeter of the baseyard should be maintained. The Lieutenant addressed the Department's fire flow requirements and the possibility of a fire buffer, in addition to other uses in the vicinity of the project. He advised that fire sprinklers had been installed at the existing processing plant, but noted that there may be a concern if the operation were to change. He recommended that approval from the Department of Fire and Public Safety be obtained if the use were to change. He further noted that living and standing trees are not considered combustible vegetation.

Mr. Stoner addressed concerns raised by your Committee. He described the boundaries of the project site. He advised that a 100-foot fire buffer would contradict the requirements of the U.S. Army Corps of Engineers and the State Land Use Commission, which require S&F to keep stream vegetation in place and to fence it, and to keep wildlife in that location safe. Mr. Stoner noted that S&F has had a landscape plan in effect for the past 15 years, and that it intends to continue adding to the existing landscaping as Lot 1-C is further developed.

Mr. Stoner informed your Committee of the history of his 35-year lease; of off-site water improvements made to the baseyard; of regular meetings with the Department of Fire and Public Safety and the Fire Marshall's office; and of regular pressure testing of the water system. He explained that the prior Administration had requested that S&F enlarge the scope of its request, to allow for additional land zoned M-2 Heavy Industrial. He noted that SOS Metals Island Recycling is currently his only M-2 user.

Mr. Stoner further explained that his lease with A&B restricts uses considerably to reduce the potential for environmental hazards. He represented that S&F would not allow a tanning plant or chemical plant at the Central Maui Baseyard even if M-2 Heavy Industrial zoning was granted. He advised that other metal facilities or similar uses that would not create a noxious problem may be allowed. Mr. Stoner advised that S&F is required to have environmental inspections conducted by a third-party environmental engineering business, and that an annual report of such inspections is provided to S&F's lessor and other entities statewide to ensure S&F is operating in an efficient and safe

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manner, and that it is using best management practices for storage. He noted that S&F also prepares an internal, supplemental, semi-annual report to ensure environmental problems are not arising at the baseyard.

Your Committee voted to recommend passage of all three revised proposed Community Plan Amendment bills.

Your Committee recommended that the hours of operation for the restaurant on Lot 1-C be limited to accommodate breakfast and lunch only. Mr. Stoner agreed with a restriction on hours, noting that a lunchwagon operation at the baseyard is limited to those two meals, and that the baseyard is closed daily at 7 p.m. Your Committee recommended that the following language be inserted at the end of Condition No. 1 of the revised proposed Change in Zoning bill for the 9.811-acre property: "Restaurant hours of operation shall be from 4 a.m. to 2 p.m. Liquor sales shall be prohibited."

Your Committee discussed concerns over limiting uses within the Central Maui Baseyard upon the expiration of S&F's lease with A&B, noting a desire to minimize fire and other environmental hazards associated with certain types of heavy industrial uses. Your Committee recommended that a new condition be added to all three revised proposed Change in Zoning bills to read: "That the Department of Fire and Public Safety shall approve any proposed use prior to any change of permitted uses within the subject property."

Your Committee further recommended that the regular environmental inspections already being conducted on the property be stated in a new condition, which would apply to all three revised proposed Change in Zoning bills, as follows: "That S & F Land Co., Inc. shall continue to conduct, at minimum, an annual third-party environmental inspection for the subject property."

Your Committee recommended that the condition requiring a landscape planting plan for Lot 1-C be revised to require that the plan incorporate water conservation measures, such as xeriscaping or drought-tolerant landscaping, and that S&F be required to continually maintain the landscaping or vegetative buffers to ensure full mitigation of the visual impacts of the industrial activity. Your Committee further recommended that the same condition be incorporated into the revised proposed Change in Zoning bills for the 58,091-square-foot property and the 43,810-square-foot property.

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Your Committee voted to recommend passage of all three of the further revised proposed Change in Zoning bills, recordation of the unilateral agreements, and filing of the communication.

Your Committee is in receipt of the revised proposed Change in Zoning bills, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's requested revisions.

Your Committee is also in receipt of an agreement entitled "Unilateral Agreement and Declaration for Conditional Zoning" for each of the three properties.

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

1. That Bill No. _____ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM LIGHT INDUSTRIAL TO HEAVY INDUSTRIAL FOR APPROXIMATELY 9.811 ACRES SITUATED AT PUUNENE, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;

2. That Bill No. _____ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM LIGHT INDUSTRIAL TO HEAVY INDUSTRIAL FOR APPROXIMATELY 58,091 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;

3. That Bill No. _____ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHAI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM LIGHT INDUSTRIAL TO HEAVY INDUSTRIAL FOR APPROXIMATELY 43,810 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;

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4. That Bill No. _____ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR APPROXIMATELY 9.811 ACRES SITUATED AT PUUNENE, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
5. That Bill No. _____ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM M-1 LIGHT INDUSTRIAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR APPROXIMATELY 58,091 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
6. That Bill No. _____ (2007), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM M-1 LIGHT INDUSTRIAL DISTRICT TO M-2 HEAVY INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR APPROXIMATELY 43,810 SQUARE FEET SITUATED AT PUUNENE, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
7. That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning" for the 9.811-acre property;
8. That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning" for the 58,091-square-foot property;
9. That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning" for the 43,810-square-foot property;
and
10. That County Communication No. 07-92 be FILED.

Adoption of this report is respectfully requested.

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