

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 21, 2007

Committee
Report No.

07-152

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

Chair and Members:

Your Land Use Committee, having met on November 14, 2007, makes reference to County Communication No. 07-142, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM RURAL TO URBAN FOR PROPERTY SITUATED AT PAPAANUI, HONUALUA, MAKAWAO, MAUI, HAWAII" (the District Boundary Amendment bill).

The purpose of the proposed District Boundary Amendment bill is to grant a request from Helen M. Lu`uwai for a District Boundary Amendment from Rural District to Urban District for approximately 14,600 square feet located at 5100 Makena Road, Makena, Maui (TMK: (2) 2-1-07:088).

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO ESTABLISH R-3 RESIDENTIAL DISTRICT ZONING FOR PROPERTY SITUATED AT PAPAANUI, HONUALUA, MAKAWAO, MAUI, HAWAII" (the Change in Zoning bill).

The purpose of the proposed Change in Zoning bill is to grant a request from Helen M. Lu`uwai for the establishment of R-3 Residential District zoning for the subject property.

3. A proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING HELEN M. LU`UWAI A CONDITIONAL PERMIT TO OPERATE A VACATION RENTAL AND LOCAL SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT, FOR PROPERTY SITUATED AT PAPAANUI, HONUALUA, MAKAWAO, MAUI, HAWAII" (the Conditional Permit bill).

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The purpose of the proposed Conditional Permit bill is to grant a request from Helen M. Lu`uwai for a ten-year Conditional Permit to operate a transient vacation rental in a four-bedroom/four-bath house and to hold local special events on the subject property.

Your Committee notes that the Department of Planning, at page 12 of the Department's Report, states that the proposed land use amendments will bring the property into conformance with the Kihei-Makena Community Plan. The Department proceeds to analyze, at pages 12 through 14 of the Report, the suitability of transient vacation rentals in the area and whether such use is in conflict with the General Plan. The Department notes that the subject property is in close proximity to Makena Resort, and cites the following considerations:

1. The use of an existing residence will not disrupt agricultural and social pursuits or impact the County's natural and cultural resources;
2. The conversion of a single-family dwelling to transient vacation rental use is in conflict with the General Plan's goal to "restrict transient rental use of single family housing in residential zones";
3. Absent a county-wide policy regarding transient vacation rentals and legislation as to where and under what conditions they should be allowed, it is difficult to conclude that the proposed transient vacation rental is consistent with the General Plan's goal; a conservative view could be taken that to restrict is to deny all transient vacation rentals in residential districts, or a more liberal attitude could be taken that they can be allowed on a case-by-case basis;
4. According to the applicant, the property and residence since 1947 were used either for recreation or as a beach home by members of the Lu`uwai family and not as their primary place of residence; the use of the dwelling as a beach home is similar in nature to a vacation home in that it is for temporary use for recreational purposes; the historical use of the residence for such purpose makes it distinct from other residences in the area, and the use of the dwelling as a transient vacation rental will not eliminate housing from residents since it was never used for long-term housing purposes;

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5. The use of the property by local and cultural organizations provides a benefit to the community; however, such group functions create other impacts not normally prevalent in residential districts that need to be addressed;
6. According to the applicant: (a) Makena is a resort destination area and typically residences are not occupied on a full-time basis; (b) most neighbors are absentee residents limited to a few days per year; (c) the proposed use will not have a significant impact upon the physical environment or unreasonably burden public infrastructure and services; and
7. The Department acknowledges that the change in the area from a sparse, isolated residential community to luxury vacation homes is an indication of the transient use of the dwellings rather than resident housing.

Your Committee notes that the Maui Planning Commission held a public hearing on the applications on February 13, 2007.

Your Committee further notes that, at its meeting of February 13, 2007, the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION FEBRUARY 13, 2007 MEETING" (Department's Report) and the conclusions presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION FEBRUARY 13, 2007 MEETING" (Department's Recommendation), voted to recommend approval of the District Boundary Amendment, Change in Zoning, and Conditional Permit. The Maui Planning Commission recommended that the Conditional Permit be subject to 14 conditions, rather than the 18 conditions recommended by the Department, and that the duration of the Conditional Permit be changed from one year to ten years.

By correspondence dated June 25, 2007, the Planning Director transmitted the following revised proposed bills, correcting the spelling of "Honuaula":

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1. A revised proposed District Boundary Amendment bill entitled “A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM RURAL TO URBAN FOR PROPERTY SITUATED AT PAPAANUI, HONUULA, MAKAWAO, MAUI, HAWAII”;
2. A revised proposed Change in Zoning bill entitled “A BILL FOR AN ORDINANCE TO ESTABLISH R-3 RESIDENTIAL DISTRICT ZONING FOR PROPERTY SITUATED AT PAPAANUI, HONUULA, MAKAWAO, MAUI, HAWAII”; and
3. A revised proposed Conditional Permit bill entitled “A BILL FOR AN ORDINANCE GRANTING HELEN M. LU`UWAI A CONDITIONAL PERMIT TO OPERATE A VACATION RENTAL AND LOCAL SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT, FOR PROPERTY SITUATED AT PAPAANUI, HONUULA, MAKAWAO, MAUI, HAWAII”.

By correspondence dated July 23, 2007, the Chair of your Committee requested that the Fire Chief clarify the requirements for smoke detectors and fire extinguishers, in light of statements made at the Maui Planning Commission’s meeting by Helen Lu`uwai’s representative, resulting in revisions by the Commission.

By correspondence dated July 23, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel advise whether it is constitutionally permissible for the Council to limit the permitted use under the Conditional Permit to functions of “Hawaii organizations, community groups, and residents”, as noted in the proposed Conditional Permit bill; whether any portion of the proposed Conditional Permit bill should be revised based on shared ownership of the property; and whether, at this stage, the other two property owners could be added as permittees. The Chair also requested that any revisions deemed necessary based on those responses be incorporated in the proposed Conditional Permit bill, in addition to certain technical revisions.

By correspondence dated July 23, 2007, the Chair of your Committee requested that the Planning Director provide a copy of departmental and agency responses, and respond to questions concerning the condition relating to parking in the proposed Conditional Permit bill; and whether comments relating to fire flow calculations and a

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backflow preventer, road widening improvements, and a written plan of action for parking for large group functions should be incorporated as conditions.

By correspondence dated July 23, 2007, the Chair of your Committee requested that Helen Lu`uwai provide documentation reflecting the ownership of the property, in addition to letters of authorization to establish that all of the property owners support the three applications.

By correspondence dated July 30, 2007, Helen Lu`uwai, Trustee, provided your Committee with the requested documentation. She asked that the Conditional Permit be granted to all three property owners, namely: Helen M. Luuwai, Trustee of the Revocable Living Trust of Helen M. Luuwai, dated December 11, 1989; Anela W. Rosa, Successor Trustee of the Revocable Living Trust of Beatrice H. Rosa, dated July 30, 1992; and Paul H. K. Luuwai.

Ms. Lu`uwai also requested that Section 2, Paragraph No. 3, of the proposed Conditional Permit bill be revised as follows: "That the Conditional Permit shall be nontransferable unless the Council approves the transfer by ordinance[.]; provided, that the transfers of ownership to and from an individual owner's revocable living trust and the assumption of a Trustee's duty by a Successor Trustee, including but not limited to exercising the rights established under the permit granted by this ordinance, shall not constitute, and shall not be deemed, a transfer requiring Council approval." (Ms. Lu`uwai apparently bracketed the period to indicate it would be deleted under her proposal.) In addition, she proposed that, in order to avoid any constitutional questions regarding the phrases "local special events" and "Hawaii organizations, community groups and residents", the words "local" and "Hawaii" be deleted from the respective phrases.

By correspondence dated August 20, 2007, the Chair of your Committee transmitted a copy of Helen Lu`uwai's correspondence dated July 30, 2007 to the Department of the Corporation Counsel for consideration in preparing a response to the Chair's July 23, 2007 request.

By separate correspondence dated August 20, 2007, the Chair of your Committee requested that the Planning Director and the Fire Chief, respectively, respond to his July 23, 2007 requests.

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By correspondence dated August 30, 2007, the Fire Chief noted that there appeared to be confusion in the requirements for smoke detectors, which must be tested monthly, with a monthly log kept. He, therefore, requested that the condition be revised to conform with the Department of Planning's original recommendation.

By correspondence dated August 31, 2007, the Planning Director provided clarification concerning certain comments contained in the Department's Report. With respect to the requirement that fire flow calculations be provided and a backflow preventer installed, the Planning Director advised that the Department would not recommend this condition be incorporated unless the Department of Water Supply could not enforce the requirements by any other means. The Planning Director noted that any roadway improvements fronting the subject property should reflect similar standards as those approved for the Papaanui Subdivision in Makena, and that a condition to that effect would be required. Finally, the Planning Director noted that it would be prudent for the applicant to prepare a plan of action for parking in light of the Maui Planning Commission's removal of a proposed condition limiting the number of guests on the property.

By correspondence dated September 22, 2007, Edward Chang, Vice Chairman, Makena Homeowners Association, advised your Committee that the members of the Makena Homeowners Association, representing more than 50 percent of the total membership, had reviewed the information presented and agreed to support the Lu`uwai family in their subject applications.

By correspondence dated October 23, 2007, the Department of the Corporation Counsel transmitted a revised proposed Conditional Permit bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL AND SPECIAL EVENTS WITHIN THE R-3 RESIDENTIAL DISTRICT, FOR PROPERTY SITUATED AT PAPAANUI, HONUULA, MAKAWAO, MAUI, HAWAII", incorporating your Committee's requested revisions and describing the permittees as follows: Helen M. Lu`uwai, Trustee of the Revocable Living Trust of Helen M. Lu`uwai, dated December 11, 1989; Anela W. Rosa, Successor Trustee of the Revocable Living Trust of Beatrice H. Rosa, dated July 30, 1992; and Paul H. K. Lu`uwai.

At its meeting, your Committee met with the Deputy Planning Director; a Civil Engineer, Engineering Division, Department of Public Works; a Deputy Corporation Counsel; Helen M. Lu`uwai, the applicant; Christopher Hart, Chris Hart & Partners, Inc.,

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the applicant's consultant; Brett Davis, Chris Hart & Partners, Inc., the applicant's consultant; and Glenn Kosaka, Esq., the applicant's attorney.

Your Committee received oral testimony from four individuals in support of the applications. One of the testifiers submitted her testimony, on behalf of a founding member of the Protect Kaho'olawe 'Ohana, in writing. The testifier noted that the structures on the property are relatively modest, but that the property is the ancestral land of the Lu'uwai 'Ohana, and represents a valuable meeting place. Another testifier noted that the character of the area is a consideration, including the fact that many of the owners in the area do not reside there on a daily basis. Others noted that the ability to operate the transient vacation rental and special events would provide the income necessary for the Lu'uwaies to keep their property, and that the Lu'uwaies encourage and support Hawaiian culture through the kinds of activities that occur on the shorefront property. Some of the testifiers requested that the proposed Conditional Permit be granted for 20 years.

The Deputy Planning Director provided an overview of the procedural history of the application. She explained that the conditions recommended by the Maui Planning Commission in the proposed Conditional Permit bill differ from those recommended by the Department. Notably, the Department had recommended that the Conditional Permit be granted for one year, while the Maui Planning Commission had recommended a ten-year duration. She summarized the other conditions that had either been deleted or altered by the Maui Planning Commission.

Mr. Hart provided a computer-generated presentation summarizing the application, along with a printout of the presentation. The presentation contained an aerial view of the location; a site plan and site maps; and photographs of the four-bedroom/four-bath house that serves as the transient vacation rental, of the property and its frontage, and of the on-site parking stalls and adjacent residences. He described the development history of the site and the physical environment, noting that the character of the residential neighborhood would not be changed by virtue of the transient vacation rental.

Your Committee discussed the property's Interim zoning designation. The Deputy Planning Director explained the basis of the designation, and the genesis of the error predating the designation.

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The Deputy Planning Director advised your Committee that Mr. Kosaka had represented Ms. Lu`uwai before the Maui Planning Commission, and had advocated for changes to the conditions recommended by the Department in the proposed Conditional Permit bill. She further advised that the Maui Planning Commission had found those arguments convincing, sympathized with Ms. Lu`uwai, and recommended changes to some of the conditions.

In light of comments by the Department of Public Works in Exhibit "4" to the Department's Report, your Committee asked the Civil Engineer whether there is a trigger for roadway improvements fronting the property. The Civil Engineer responded that there is no trigger or requirement for such improvements. Your Committee notes that a condition establishing roadway standards is therefore unnecessary.

Ms. Lu`uwai advised your Committee that there is room for eight parking stalls on the property. She noted that there have not been parking issues or on-street parking problems. Groups either bus in or vehicles park on the property.

Your Committee discussed the revised language suggested by Ms. Lu`uwai relating to the non-transferability provisions of Paragraph No. 3 of the proposed Conditional Permit bill. The Deputy Corporation Counsel clarified its meaning and advised that he did not see a problem in incorporating the revised language.

Your Committee voted to recommend passage of the revised proposed District Boundary Amendment bill and the revised proposed Change in Zoning bill.

Your Committee debated the duration of the Conditional Permit recommended by the Maui Planning Commission, noting concerns over consistency. Your Committee noted that each Conditional Permit is evaluated on a case-by-case basis, and voted to recommend passage of the revised proposed Conditional Permit bill with a single revision. That revision incorporates the additional language requested by Ms. Lu`uwai to Section 2, Paragraph No. 3, regarding transfer of ownership.

Your Committee also voted to recommend filing of the communication.

Your Committee is in receipt of a further revised proposed Conditional Permit bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's requested revisions.

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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 STATE LAND USE DISTRICT CLASSIFICATION FROM RURAL TO URBAN FOR PROPERTY SITUATED AT PAPAANUI, HONUULA, MAKAWAO, 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 ESTABLISH R-3 RESIDENTIAL DISTRICT ZONING FOR PROPERTY SITUATED AT PAPAANUI, HONUULA, MAKAWAO, 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 GRANTING A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL AND SPECIAL EVENTS WITHIN THE R-3 RESIDENTIAL DISTRICT, FOR PROPERTY SITUATED AT PAPAANUI, HONUULA, MAKAWAO, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
4. That County Communication No. 07-142 be FILED.

Adoption of this report is respectfully requested.

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MICHAEL J. MOLINA **Chair**

JO ANNE JOHNSON **Member**

JOSEPH PONTANILLA **Vice-Chair**

DANNY A. MATEO **Member**

MICHELLE ANDERSON **Member**

BILL KAUAKEA MEDEIROS **Member**

GLADYS C. BAISA **Member**

MICHAEL P. VICTORINO **Member**

G. RIKI HOKAMA **Member**