

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

February 8, 2008

Committee
Report No.

08-22

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

Chair and Members:

Your Land Use Committee, having met on January 23, 2008, makes reference to County Communication No. 07-219, 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 AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII" (District Boundary Amendment bill).

The purpose of the proposed District Boundary Amendment bill is to grant a request from Samuel M. Garcia, Jr. and Jon E. Garcia (the Garcias) for a District Boundary Amendment from Agricultural to Urban for the Garcia Family Subdivision, a ten-lot single-family residential subdivision, and related improvements on approximately 5.497 acres located in Makena, Maui (TMK: (2) 2-1-07:067). The subject property is identified on the County's real property tax database as 5405 Makena Road, but the existing residences on the subject property are also identified as 189, 191, and 193 Makena Road. Your Committee notes that the property is in close proximity to Keawalai Congregational Church (Keawalai Church), located at 190 Makena Road.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM HOTEL TO SINGLE FAMILY FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII" (Community Plan Amendment bill).

The purpose of the proposed Community Plan Amendment bill is to grant a request from the Garcias for a Community Plan Amendment from Hotel to Single-Family for the Garcia Family Subdivision.

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3. A proposed bill entitled “A BILL FOR AN ORDINANCE TO ESTABLISH R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII” (Change in Zoning bill).

The purpose of the proposed Change in Zoning bill is to grant a request from the Garcias for a Change in Zoning to establish R-3 Residential District zoning for the Garcia Family Subdivision.

Your Committee notes that the Maui Planning Commission held a public hearing on the applications on November 28, 2006.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the document entitled “MAUI PLANNING DEPARTMENT’S REPORT TO THE MAUI PLANNING COMMISSION November 28, 2006 MEETING” (Department’s Report), and the conclusions and recommendation presented in the document entitled “MAUI PLANNING DEPARTMENT’S RECOMMENDATION TO THE MAUI PLANNING COMMISSION November 28, 2006 MEETING”, voted to recommend approval of the applications on November 28, 2006, subject to a single Change in Zoning condition, as follows:

- “1. That prior to final subdivision approval, the applicant shall submit evidence of compliance with either a pending or adopted County Affordable Housing policy as determined by the Department of Housing and Human Concerns”.

By correspondence dated December 31, 2007, the Chair of your Committee requested that the Planning Director provide a revised District Boundary Amendment map and a revised Community Plan Amendment map, incorporating technical and nonsubstantive revisions, along with two copies of the Final Environmental Assessment for the project, dated June 2006 (FEA).

By correspondence dated December 31, 2007, the Chair of your Committee requested that the Director of Housing and Human Concerns advise your Committee of the Department’s current position on: (1) the applicability of the proposed condition of zoning; (2) the applicability of Chapter 2.96, Maui County Code (MCC), to the proposed

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subdivision; and (3) any other updates concerning the provision of affordable and/or residential workforce housing that may be germane to the project.

By correspondence dated December 31, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed Community Plan Amendment bill to accommodate the fact that, according to the Department's Report, at page 2, the application was certified as complete on September 3, 2002, prior to the effective date of Chapter 2.80B, MCC. The Chair also requested other nonsubstantive or technical revisions to all three proposed bills.

By correspondence dated December 31, 2007, the Chair of your Committee requested that the Director of Public Works provide written confirmation as to whether the project has received preliminary subdivision approval, and if so, the date it was received. The Chair also requested the Department's position concerning frontage or right-of-way improvements, if any, that would be required on Makena Road (also known as Makena-Keoneoio Road) as a result of the proposed land use changes and planned ten-lot subdivision, absent any variance from the Board of Variances and Appeals, or condition of zoning incorporated by the Council.

By correspondence dated January 11, 2008, the Department of the Corporation Counsel transmitted the following revised proposed bills, incorporating the requested revisions:

1. A revised proposed District Boundary Amendment bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII";
2. A revised proposed Community Plan Amendment bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM HOTEL TO SINGLE-FAMILY FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII"; and
3. A revised proposed Change in Zoning bill entitled "A BILL FOR AN ORDINANCE TO ESTABLISH R-3 RESIDENTIAL DISTRICT ZONING (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII".

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By correspondence dated January 14, 2008, the Director of Housing and Human Concerns advised that the Department would need to consult with the Department of the Corporation Counsel prior to responding to the December 31, 2007 inquiry.

By correspondence dated January 16, 2008, the Director of Housing and Human Concerns responded that the proposed subdivision is exempt from the requirements of Chapter 2.96, MCC, since preliminary subdivision approval was received on November 3, 2006, prior to the effective date of the chapter. She further responded that, following consultation with the Department of the Corporation Counsel, the Department of Housing and Human Concerns believes the wording of the proposed condition is vague, and further, that if it is the Council's intent to require the Garcias to provide affordable housing or residential workforce housing, the proposed condition could be clarified to require that the proposed subdivision comply with Chapter 2.96, MCC, notwithstanding any provision to the contrary. Finally, the Director advised that the Garcias have offered to provide funds toward affordable housing, although no written proposal had been received.

By correspondence dated January 16, 2008, Raymond Cabebe, Planner, Chris Hart & Partners, Inc., transmitted a copy of the FEA for the project.

By correspondence dated January 17, 2008, the Planning Director transmitted a revised District Boundary Amendment map and a revised Community Plan Amendment map, incorporating the requested revisions. He also transmitted two copies of the FEA, noting that the preservation plan for the Kalani Heiau is included in Appendix I of the FEA.

By correspondence dated January 17, 2008, the Director of Public Works confirmed that preliminary subdivision approval for the project was granted on November 3, 2006. He informed your Committee of the existing improvements on that portion of Makena-Keoneoio Road fronting the subject property. He noted that those improvements would not be consistent with the traditional rural scale and character of old Makena Road as described by the roadway-related condition of zoning for the Papaanui, LLC project. He advised that such consistency would require removal of the curb and sidewalk, and provision of a road-widening lot which would allow for a 32-foot wide roadway right-of-way.

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By correspondence dated January 18, 2008, Raymond Cabebe, Planner, Chris Hart & Partners, Inc., transmitted an additional copy of the FEA, along with nine compact discs of the FEA for distribution to the members of your Committee.

At its meeting, your Committee met with the Planner Director; the Director of Housing and Human Concerns; an Executive Assistant, Office of the Mayor; the Deputy Director of Public Works; the Planning and Development Division Chief, Department of Parks and Recreation; the Corporation Counsel; a Deputy Corporation Counsel; Samuel M. Garcia, Jr. and Jon E. Garcia, the landowners; Rory Frampton, consultant for the Garcias; Raymond Cabebe, Planner, Chris Hart & Partners, Inc., consultant for the Garcias; Stacy Otomo, President, Otomo Engineering, Inc.; and Kapa Maly, Cultural Historian Resource Specialist, Kumu Pono Associates LLC. Your Committee also notes the presence of Kamaile Sombelon, Executive Director, Lokahi Pacific.

Your Committee received a computer-generated presentation from Mr. Frampton, along with a printout of the presentation. The presentation contained photographs of the subject property, including various vantage points along Makena-Keoneoio Road, and placed the property in the context of surrounding land uses. The presentation also showed the site topography and existing conditions; the archaeological sites on the property; previous and proposed site plans; a graphic of the grading and drainage plan; a chronology covering the archaeological work and environmental assessment for the project; the Garcias' suggested conditions of zoning; and their anticipated covenants, conditions, and restrictions (CC&Rs). Mr. Frampton noted that the previous site plan had contemplated 11 lots; however, the Garcias had decided to decrease the project's density and expand the preservation area. He advised that certain view planes would also be preserved, and that onsite detention basins had been designed to handle a capacity that is 50 percent greater than the capacity required by the County.

Mr. Frampton attached two additional documents to the printout of the presentation: (1) correspondence dated January 16, 2008, from Alan Goda, President, Makena Wastewater Corp. (Makena Wastewater), to Sam Garcia, Jr., confirming that Makena Wastewater has agreed that the Garcia Family Subdivision may connect a sewer line to its wastewater system and that Makena Wastewater is willing to provide wastewater service to the property; and (2) correspondence dated January 17, 2008, from B. Martin Luna, Esq., Carlsmith Ball LLP (attorney for the Garcias), to Kamaile Sombelon, Executive Director, Lokahi Pacific, stating that the Garcias wish to contribute to Lokahi Pacific the sum of \$250,000, payable upon the granting of final subdivision approval, toward various affordable housing programs that Lokahi Pacific is

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directly involved with in South Maui, provided that the funds are used only for the development and maintenance of affordable housing in the Kihei-Makena Community Plan area, and the affordable housing projects are sponsored by Lokahi Pacific or a subsidiary thereof.

Mr. Frampton also provided your Committee with a handout containing four conditions suggested by the Garcias, as follows:

- “1. That once the property has received final subdivision approval, the ten (10) residential lots shall not be further subdivided and shall not be the subject of a condominium property regime.
2. 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, improvements to Makena-Keoneoio Road fronting the project site shall be provided in the following manner: (a) provide a road-widening lot that would provide for a minimum 32 foot roadway right-of-way; (b) the existing sidewalk and curb shall remain in place; (c) there shall be no street lights or gutters; and (d) retaining walls abutting the right-of-way shall not exceed 4 feet in height. This condition shall exempt Samuel M. Garcia, Jr., and Jon E. Garcia, their successors or permitted assigns, from improving any portion of Makena-Keoneoio Road to urban standards.
3. That transient vacation rentals shall be prohibited.
4. That no bed and breakfast [*sic*] home or commercial operations shall be allowed.”

The Planning Director informed your Committee that, during the review process, the Garcias had agreed to reduce the number of lots from 11 to 10. He noted that the Garcias had been required to resubmit an archaeological plan, highlighting the positive aspects of review and regulation. He also advised that, given the size of the proposed development and the fact that it is already in a “committed area”, the Department has no concerns with the project, which proposes a reduction in density.

The Deputy Director of Public Works commented that, while not meeting the current standards for a “gutter”, the existing improvement fronting the project site is the

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functional equivalent of a gutter, and that the suggested condition relating to Makena-Keoneoio Road should therefore be revised to state that the existing gutter would remain in place.

Your Committee received oral testimony from three individuals, two in support of the project and one providing comments. Testifiers in support of the land use changes noted that the property would be down-zoned if the Change in Zoning was approved, that the Kalani Heiau would be preserved, that extensive cultural research had been undertaken, and that Keawalai Church would become the caretaker of the Heiau. A testifier requested that your Committee consider the quietness of the area, which is adjacent to Keawalai Church, and the fact that there is currently a no-parking sign in front of the Garcias' house.

Your Committee discussed the suggested condition relating to Makena-Keoneoio Road. Mr. Frampton advised that the existing width of the right-of-way varies, decreasing to 29 feet at one point. He noted that the Garcias would provide a land dedication, subdivide a portion of their property, and incorporate it into the right-of-way so that a 32-foot wide right-of-way could eventually be provided.

Your Committee debated the utility of the road-widening lot, in light of the existing sidewalk, curb, and gutter fronting the project site. The Deputy Director advised that the Department is trying to maintain a consistent standard for the roadway, and that the Papanui, LLC project had helped to define the rural standard for the corridor (absent the formulation of standards by the Department of Planning pursuant to the Kihei-Makena Community Plan). Noting the property's proximity to Keawalai Church, your Committee considered language in the Kihei-Makena Community Plan, at Part III(B), as it pertains to physical and social infrastructure, as follows: "f. Protect and preserve the traditional rural scale and character of existing portions of old Makena Road in a manner similar to that existing at Keawalai Church". Your Committee did not agree that the existing improvements fronting the project site should be removed, but rather, recommended that they be kept in place.

Your Committee discussed the fact that the Garcias are exempt from the residential workforce housing requirements of Chapter 2.96, MCC, but had nonetheless volunteered to contribute funds to Lokahi Pacific. Your Committee expressed concerns that the Department of Housing and Human Concerns had not been advised of the Garcias' specific proposal and of the Department's inability to comment as a result.

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Ms. Sombelon informed your Committee that she had met with the Garcias and been advised that it might be a year or two before the Garcias' contribution would be released to Lokahi Pacific. She noted that costs associated with one of Lokahi Pacific's developments, a seven-lot subdivision in Kihei, had risen by approximately \$30,000 per unit, and that if the funds are available, Lokahi Pacific would use the funds for that project. She stated that the Lokahi Pacific board of directors had approved the acceptance of the funds, and that a co-development agreement would be negotiated, with the funds earmarked for a Lokahi Pacific project in Kihei.

With the Director of Housing and Human Concerns' assistance, your Committee estimated that the in-lieu funds that would have been required under Chapter 2.96, MCC, total \$491,000. Your Committee discussed the Department's January 16, 2008 response with both the Director and the Deputy Corporation Counsel.

Mr. Frampton noted that the project still needed to go through the subdivision process and obtain water meters. He further noted that throughout the application process, the Garcias had been advised that they would be exempt from the proposed County affordable housing policy. He advised that the Garcias nonetheless agreed to increase their voluntary contribution to \$491,000, payable prior to initiation of construction.

Your Committee noted difficulties in principle with deliberations over the amount of an affordable housing contribution when the project is exempt. However, your Committee expressed its appreciation for the contribution volunteered by the Garcias. Your Committee requested that the \$491,000 contribution be memorialized through a revised letter to Lokahi Pacific, to be submitted prior to first reading.

Your Committee discussed amendments to the site plan, aspects of the preservation plan, and drainage and water quality concerns expressed by a neighbor.

Your Committee agreed with the Garcias' suggested Condition Nos. 1 and 4. On the latter condition, the Planning Director advised that the Department supports bed and breakfast operations if they are permitted, and that the project site would be a good location for a bed and breakfast. Your Committee nonetheless recommended that these two conditions be incorporated without revision.

With respect to the Garcias' suggested Condition No. 3, the Planning Director recommended that your Committee clarify that transient vacation rentals could not be

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permitted for the subdivision through the conditional permit process. Your Committee also revised the condition to prohibit fractional ownership interests. As revised, the condition reads: "That no transient vacation rentals, time shares, or fractional ownership shall be allowed; and further, no special use permit or conditional permit for such accommodations shall be approved by the County."

Your Committee discussed public safety issues relating to roadway width and Americans with Disabilities Act issues relating to sidewalk width. In light of the existing sidewalk, curb, and gutter improvements, your Committee recommended that the Garcias' suggested Condition No. 2 be revised to require a road-widening reserve lot to be dedicated to the County upon demand, should the County need it in the future. Your Committee also revised the condition to move the reference to the gutter from subsection (c) to subsection (b), in acknowledgment of the Deputy Director of Public Works' clarification that the existing curb includes a gutter.

Your Committee voted to recommend passage of the revised proposed District Boundary Amendment bill and the revised proposed Community Plan Amendment bill. Your Committee also voted to recommend passage of a revised proposed Change in Zoning bill replacing the existing Exhibit "B" containing a single condition, with a new Exhibit "B" containing the Garcias' four suggested conditions, as revised by your Committee; recordation of the unilateral agreement; and filing of the communication.

Your Committee is in receipt of a revised proposed Change in Zoning bill, 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" executed by Samuel M. Garcia, Jr. and Jon E. Garcia.

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

1. That Bill No. _____ (2008), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII", be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**;

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2. That Bill No. _____ (2008), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM HOTEL TO SINGLE-FAMILY FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
3. That Bill No. _____ (2008), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO ESTABLISH R-3 RESIDENTIAL DISTRICT ZONING (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
4. That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning"; and
5. That County Communication No. 07-219 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**