

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

June 23, 2006

**Committee**  
**Report No.**

\_\_\_\_\_ 06-72

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 7, 2006, makes reference to County Communication No. 06-33, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2734 (1998), TO EXTEND A CONDITIONAL PERMIT TO ALLOW THE CONTINUED OPERATION OF THE MAKENA WATER RECLAMATION FACILITY WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT MAKENA, MAUI, HAWAII". The purpose of the proposed bill is to grant a request from Roy Figueiroa, on behalf of Makena Resort Corporation, for a Conditional Permit time extension for the continued operation of a water reclamation facility located within the Makena Resort, Makena, Maui, until the water reclamation facility use ceases to exist (TMK: (2) 2-1-08:108 (por.)). The proposed bill also grants a transfer of the permit from Makena Resort Corporation to Makena Wastewater Corporation.

Your Committee notes that the Maui Planning Commission held a public hearing on the application on October 25, 2005.

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 OCTOBER 25, 2005 MEETING", and the conclusions and recommendation presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION OCTOBER 25, 2005 MEETING", voted to recommend approval of the application for a Conditional Permit time extension and transfer of the permit on October 25, 2005.

By correspondence dated February 21, 2006, the Chair of your Committee requested that the Department of the Corporation Counsel clarify the identity of the original permit holder and the name of the facility, and correct the section numbering in the proposed bill.

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By correspondence dated February 21, 2006, the Chair of your Committee requested that the Planning Director provide a copy of landownership documentation and letters of authorization; confirm that the permit extension request was timely made, less than 90 days prior to its expiration; clarify the meaning of the phrase "under the control of the owner" in Condition No. 3; provide any precedent for the grant of a permit until the "use ceases to exist"; and advise your Committee, due to the indefinite duration of the proposed time extension, of any historical experience the Department has had with the proposed transferee, the Makena Wastewater Corporation.

By correspondence dated March 3, 2006, the Planning Director provided the requested documentation; advised that the Department has consistently processed time extension requests submitted prior to the expiration date of the Conditional Permit; provided an explanation relating to the phrase "under the control of the owner"; responded that the Department is unaware of any Conditional Permit that was granted until the use ceases to exist; and further responded that the Department has had no historical experience with the proposed new permit holder, which is a newly formed entity that "operates the water reclamation facility" and is an affiliate of Makena Resort Corporation.

By correspondence dated May 10, 2006, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2734 (1998), TO EXTEND A CONDITIONAL PERMIT TO ALLOW THE CONTINUED OPERATION OF A WATER RECLAMATION FACILITY AND RELATED IMPROVEMENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT ON A PARCEL OF LAND LOCATED AT MAKENA, MAUI, HAWAII". The revised proposed bill incorporates the corrections and clarifications requested by correspondence dated February 21, 2006, from the Chair of your Committee.

At its meeting, your Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works and Environmental Management; and a Deputy Corporation Counsel. Your Committee also met with Roy Figueiroa, Vice President, Makena Resort Corporation (the applicant); John Oka, Vice President, Makena Wastewater Corporation; and Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., the applicant's land use consultant.

Mr. Figueiroa provided your Committee with correspondence dated June 7, 2006, from Jun Kobayashi, President, Ainamua Corporation, confirming that Munekiyo &

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Hiraga, Inc., Makena Resort Corporation, and Makena Wastewater Corporation, are authorized to prepare, file, and process the subject application.

Ms. Ohashi Hiraga briefly noted that the applicant is requesting a time extension and transfer of the Conditional Permit from Makena Resort Corporation to Makena Wastewater Corporation.

The Planner provided background information relating to the application, noting that the Conditional Permit had been granted by Ordinance No. 2734 on December 16, 1998, and the facility had been completed in 2003. She informed your Committee that Makena Wastewater Corporation is a licensed public utility company and an affiliate of Makena Resort Corporation, the original permit holder.

The Planner distributed copies of the following documents: (1) the Conditional Permit application filed in 1997, reflecting Ainamua Corporation as the property owner and Makena Resort Corporation as the applicant; (2) correspondence dated September 22, 1997 from Eiju Oshima, Vice President, Ainamua Corporation, and Yoichi Asari, Secretary, Ainamua Corporation, to a former Planning Director, authorizing Makena Resort Corporation and Eric T. Maehara to pursue the application; (3) a Warranty Deed dated October 16, 1990, for the subject property, reflecting Ainamua Corporation as the Grantee; and (4) a photograph of the reclamation facility.

The Planner summarized the proceedings before the Maui Planning Commission and the applicable land use designations for the subject property. She noted that the Maui Planning Commission had recommended that the Conditional Permit be valid until the use of the facility ceases to exist, and the Department considered that recommendation appropriate because of the facility's use as a public utility. She also advised that the Maui Planning Commission recommended that Condition Nos. 5 and 6 be deleted because they related to construction of the facility, which had since been completed.

There was no public testimony.

Your Committee expressed concerns over the open-ended duration set forth in the proposed bill, noting that it could create a bad precedent. Your Committee noted that it might be appropriate for the applicant to pursue a Change in Zoning given the contemplated longevity of the use.

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Mr. Oka informed your Committee that the reclamation facility is an R-1 facility intended to provide 100 percent reusable water. He noted that, although the facility is designed to handle 720,000 gallons per day (gpd), it currently handles approximately 60,000 to 70,000 gpd, servicing the hotel, golf clubhouse, and immediate area. Mr. Oka advised that a public restroom was recently added in the area; that the recycled water is used on the golf course or surrounding vegetation; and that there are no active injection wells.

Mr. Figueiroa confirmed that Ainamua Corporation is an affiliate of Makena Resort Corporation, which is the development arm of the different entities that own the land.

Your Committee recommended that the proposed bill be further revised to allow for a five-year extension, rather than the recommended extension "until the water reclamation facility use ceases to exist".

Your Committee voted to recommend passage of the further revised proposed bill and filing of the communication.

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

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

1. That Bill No. \_\_\_\_\_ (2006), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 2734 (1998), TO EXTEND A CONDITIONAL PERMIT TO ALLOW THE CONTINUED OPERATION OF A WATER RECLAMATION FACILITY AND RELATED IMPROVEMENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT ON A PARCEL OF LAND LOCATED AT MAKENA, MAUI, HAWAII", be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**; and
2. That County Communication No. 06-33 be **FILED**.

Adoption of this report is respectfully requested.

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**ROBERT CARROLL** **Chair**

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**DAIN P. KANE** **Member**

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**JOSEPH PONTANILLA** **Vice-Chair**

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**DANNY A. MATEO** **Member**

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**MICHELLE ANDERSON** **Member**

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**MICHAEL J. MOLINA** **Member**

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**G. RIKI HOKAMA** **Member**

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**CHARMAINE TAVARES** **Member**

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**JO ANNE JOHNSON** **Member**