

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 7, 2001

Committee
Report No.

01-240

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

Chair and Members:

Your Land Use Committee, having met on March 12, 2001, July 2, 2001, July 5, 2001, August 15, 2001, September 4, 2001, September 5, 2001, October 18, 2001, and October 29, 2001, makes reference to County Communication No. 00-242, from the Planning Director, transmitting a draft bill entitled "A BILL FOR AN ORDINANCE TO AMEND PORTIONS OF LAND ZONING MAP NOS. 5 AND 514 TO ESTABLISH A-2 APARTMENT DISTRICT, B-2 COMMUNITY BUSINESS DISTRICT, B-R RESORT COMMERCIAL DISTRICT, H-M HOTEL DISTRICT, PK-1 NEIGHBORHOOD PARK DISTRICT, PK-4 GOLF COURSE PARK DISTRICT, R-1 AND R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR LANDS SITUATED AT MAKENA, MAUI, HAWAII".

The purpose of the draft bill is to approve a request to change the zoning for various parcels of land in the Makena Resort area in order to implement the Kihei-Makena Community Plan and Makena Resort's Master Plan for 755.689 acres in South Maui, identified for real-property-tax purposes as TMK Nos: 2-1-5:83, 84, 85, 86, portion of 108, 120, 124,125; 2-1-6:36, 37, 56, 57, 59; 2-1-7:4, 68, 92, 93, 94; and 2-1-8:78, 79, 80, 81, portion of 90, 98, 99, 100. The request for a change in zoning was initiated on November 8, 1999, by an application filed by Makena Resort Corp. (Makena Resort), as authorized by the respective then-owners of the parcels comprising the subject property, 'Ainamua Corporation, Makena 'Aina Corp., and Maui Prince Hotel Corp.

Your Committee notes that the Maui Planning Commission held a public hearing and meeting on the requested change in zoning on July 25, 2000. At the public hearing, one person testified in support of the requested change in zoning and two individuals expressed concerns. At the meeting, the Maui Planning Commission voted to recommend approval of the requested change in zoning, subject to ten conditions, after reviewing the findings presented in documents entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION JULY 25, 2000 MEETING" and "MAUI

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PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION JULY 25, 2000 MEETING".

The Maui Planning Commission voted to recommend approval of the requested change in zoning subject to the following conditions:

1. The density of the R-1, R-2 and R-3 Residential District zoned areas shall not exceed 2.5 single family dwelling units per acre.
2. The density of the A-2 Apartment zoned areas shall not exceed 10 units per acre and the height shall not exceed 45 feet.
3. The floor area of the B-2 Community Business District shall not exceed 60 percent of the total lot area.
4. Within the B-2 Community Business District, the following permitted uses shall incorporate acoustical measures into the facility to mitigate potential noise impacts; amusement enterprises, including billiard or pool halls; auditoriums and theater; baseball or football stadiums and other sport activities and amusements; bowling alleys; dancing and hula studios; gymnasiums; miniature golf courses; music conservatories or music studios; physical-culture studios; and printing, lithography or publishing shops.
5. Within the B-2 Community Business District, exterior lighting shall be shielded from adjacent residential properties for the following permitted uses: automobile parking lots and/or buildings; baseball or football stadiums and other sport activities and amusements; equipment rental and sales yards; miniature golf courses; parcel delivery stations; and public parking areas.
6. Within the B-2 Community Business District, merchandise, equipment and supplies shall be stored within enclosed buildings or enclosed areas that are appropriately screened with fencing and landscape planting for the following permitted uses: equipment rental and sales yards; hardware and garden supply stores; parcel delivery stations; and printing, lithography or publishing shops.

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7. The applicant, its successors and assigns, shall provide opportunities for pedestrian and/or bicycle access ways within the roadways fronting the subject property. Schematic designs shall be submitted to the Maui County Planning Department for consideration by the Maui Planning Commission in conjunction with future Special Management Area Permit applications for the subject property.
8. The applicant, its successors and assigns, shall contribute to the development, funding, and/or construction of school facilities, on a fair share basis, as determined by and to the satisfaction of the Department of Education (DOE). This condition shall apply only to lands zoned for single-family or multi-family residential use excluding areas that are part of State Land Use Commission Docket No. A97-721.
9. The applicant, its successors and assigns, shall participate in the pro rata funding and construction of local and regional transportation improvements and programs, including dedication of rights of way as determined by the State Department of Transportation (DOT) and the County of Maui.
10. The applicant shall comply with affordable housing requirements adopted by the County of Maui.

Your Committee further notes that the recommendation of the Maui Planning Commission was based upon the findings indicated in the "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION JULY 25, 2000 MEETING" and "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION JULY 25, 2000 MEETING".

By correspondence dated September 27, 2000, the Council Chair transmitted correspondence dated September 22, 2000, from attorney Eric Maehara, representing Makena Resort, transmitting an Educational Contribution Agreement entered into by his client and the Department of Education.

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By correspondence dated November 20, 2000, the Council Chair transmitted correspondence dated November 9, 2000, from the Planning Director, transmitting the minutes of the Maui Planning Commission's meeting of July 25, 2000, and a revised legal description for Lots 17 and 19, as well as a revised Land Zoning Map reflecting a change in a portion of the boundary line between Lots 17 and 19 to accommodate an existing golf course maintenance roadway.

At its meeting of November 16, 2000, the Committee recommended that County Communication No. 00-242 be referred to the Council Chair for the term beginning January 2, 2001, for a recommendation as to referral or other disposition.

At its meeting of January 12, 2001, the Council referred County Communication No. 00-242 to your Land Use Committee (County Communication No. 01-21).

By correspondence dated February 27, 2001, the Chair of your Committee requested that the Planning Director transmit a copy of Makena Resort's application for change in zoning.

By correspondence dated March 1, 2001, the Planning Director transmitted a document entitled "Application for Change in Zoning MAKENA RESORT", dated November 1999, prepared by Munekiyo, Arakawa & Hiraga, Inc., on Makena Resort's behalf.

By correspondence dated March 11, 2001, the Chair of your Committee transmitted copies of three newspaper articles relating to the requested change in zoning.

By correspondence dated March 12, 2001, the Council Chair transmitted correspondence, all dated March 11, 2001, in opposition to the draft bill from Rick and Dale Pounds, Erin Graue, and Tom Barefoot.

At its meeting of March 12, 2001, your Committee met with a Geographic Information Systems (GIS) Specialist from the Office of the Mayor; the Director of Parks and Recreation; the Deputy Planning Director; a Staff Planner from the

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Department of Planning; a Deputy Corporation Counsel; Roy Figueiroa, General Manager, Makena Resort; Eric Maehara, attorney for Makena Resort; Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., land-use consultant for Makena Resort; and Randall Okaneku, traffic-management consultant for Makena Resort.

Your Committee received public testimony from a representative of the Wailea Community Association in support of the draft bill. Your Committee also received public testimony from 13 individuals who expressed reservations about or opposition to the draft bill, primarily because of concerns relating to water and transportation infrastructure.

Your Committee received paper copies of a computer-generated slideshow presentation from Makena Resort's land-use consultant, Gwen Ohashi Hiraga.

Ms. Hiraga made a computer-generated slideshow presentation providing background information on the requested change in zoning. The presentation made the following points:

- The Makena Resort encompasses an area of approximately 1,030 acres in South Maui.
- Makena Resort is proposing to change the zoning for various parcels of land totaling 755.689 acres in order to implement the Kihei-Makena Community Plan and Makena Resort Master Plan.
- Of this acreage, approximately 477 acres have been developed, the majority of which are two golf courses, the Makena North Course and Makena South Course. Other developed lands include the Maui Prince Hotel; Makena Tennis Club (six courts); Makena Golf Clubhouse; public comfort stations, public parking, and picnic areas at Makena Landing across Keawalai Church and at both ends of the pedestrian walkway fronting the Maui Prince Hotel.
- Of the remaining lands (278.589 acres), approximately 125 acres are vacant lands where the existing zoning is not proposed to be changed

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and, approximately 153 acres are vacant lands for which the zoning is proposed to be changed.

The computer-generated slideshow presentation also included maps of the subject property. The presentation also provided the following information about the subject property's existing land-use designations:

- Most of the subject property is in the State Urban District, although approximately 95 acres of the existing Makena North Golf Course is in the State Agricultural District.
- The various community-plan designations for the parcels comprising the subject property in the Kihei-Makena Community Plan are: Park, Park (Golf Course), Single Family, Multi Family, Business/Commercial, and Hotel.
- The various zoning designations for the parcels comprising the subject property are: Agricultural; Park; Golf Course and Open Space; Open Zone; A-1 and A-2 Apartment; R-1, R-2 and R-3 Residential; BR Business Resort; H-M Hotel; Interim; and STP Sewage Treatment Plant.

In response to your Committee's questions, Makena Resort's representatives asserted that existing and proposed water and transportation infrastructure would be sufficient to meet the needs of any development that would be authorized by the requested change in zoning. They noted that Makena Resort had access to water as a participant in the Central Maui Source Development Joint Venture and that Makena Resort was working with the State Department of Transportation in funding necessary highway improvements.

Your Committee indicated that more information was needed on the water and transportation issues and deferred consideration of the draft bill.

By correspondence dated March 13, 2001, the Chair of your Committee transmitted correspondence, both dated March 12, 2001, in opposition to the draft bill from Marilyn Allysum and Hermine Harman.

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By correspondence dated March 13, 2001, Citizens for Justice submitted comments regarding the requested change in zoning.

By correspondence dated May 4, 2001, the Chair of your Committee transmitted a newspaper article relating to the requested change in zoning.

By correspondence dated June 6, 2001, the Chair of your Committee transmitted a newspaper article relating to the requested change in zoning.

By correspondence dated June 25, 2001, the Chair of your Committee requested that the Planning Director indicate: (1) the legal significance of designating Makena Resort's proposal as a "Master Plan"; and (2) whether Makena Resort had complied with the provisions of Section 19.510.080, "Project master plan," Maui County Code.

By correspondence dated June 25, 2001, the Chair of your Committee requested that Brian Minaai, State Director of Transportation, attend the Committee meeting scheduled for July 2, 2001 to discuss proposed highway improvements in South Maui.

By correspondence dated June 29, 2001, the Planning Director informed your Committee that the requested change in zoning was not considered a "master plan" as that term is defined in the Maui County Code.

At its meeting of July 2, 2001, your Committee met with the Chief of Planning and Development from the Department of Parks and Recreation; the Planning Director; the Deputy Planning Director; a Staff Planner from the Department of Planning; the Director of Public Works and Waste Management; the Director of Water Supply; a Deputy Corporation Counsel; the State Director of Transportation; the State Deputy Director of Transportation; Roy Figueiroa, General Manager, Makena Resort; Eric Maehara, attorney for Makena Resort; and Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., land-use consultant for Makena Resort.

Your Committee received the following documents:

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- Written testimony of Brian Minaai, State Director of Transportation, providing information on the status of proposed highway improvements on Maui.
- Informational graphs relating to traffic on Piilani Highway (submitted by the Committee Chair).

Your Committee received public testimony from three Makena Resort employees and two Makena residents in support of the draft bill. They stated that Makena Resort has been a good corporate citizen, providing much-needed jobs, funding infrastructure that has benefited all of South Maui, and exhibiting sensitivity to community, cultural, and environmental concerns.

Mr. Minaai informed your Committee that Makena Resort has made “significant efforts in addressing (its) contribution towards the highway infrastructure in South Maui.” He also noted that the State Department of Transportation (DOT) is proposing several highway improvements for South Maui, primarily involving Piilani and Mokulele highways. He informed your Committee of the following facts:

- For Mokulele Highway, an \$80-million widening and safety-improvement project from Kuihelani to Piilani Highway will be initiated later this year, with funding from the Federal government, the State government, the County government, and Alexander & Baldwin, Inc.
- For Piilani Highway, recent traffic-signal adjustments have improved traffic flow, and an interim \$4 million project (including \$1 million in County funds) will restripe the existing two-lane highway and provide four lanes on the current surface (from Mokulele to Kilohana Drive) by 2004. The interim project is expected to ease traffic congestion by at least 50 percent. The DOT is working with the County, Makena Resort, and another developer, Wailea 670 Associates, to implement long-term improvements. In addition, the developers will jointly contribute at least \$400,000 to the interim project.

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- The DOT is willing to work with the Council to identify increased funding for highway improvements, including through agreements with developers.

Your Committee recessed its meeting until July 5, 2001.

By correspondence dated July 5, 2001, Councilmember Wayne K. Nishiki proposed that the draft bill be amended to impose a new condition requiring the developer to fund the expansion and extension of Piilani Highway into Makena.

At its reconvened meeting of July 5, 2001, your Committee met with a GIS Specialist from the Office of the Mayor; the Chief of Planning and Development from the Department of Parks and Recreation; the Deputy Planning Director; a Staff Planner from the Department of Planning; the Director of Water Supply; a Deputy Corporation Counsel; Roy Figueiroa, General Manager, Makena Resort; Eric Maehara, attorney for Makena Resort; and Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., land-use consultant for Makena Resort.

Your Committee received the following documents:

- Correspondence from Councilmember Robert Carroll, dated July 5, 2001, indicating the Makena Resort should be required to: (1) satisfy applicable affordable-housing requirements before proceeding with new development authorized by the requested change in zoning; and (2) provide regular reports on the status of new development authorized by the requested change in zoning.
- Copies of Sections 2.90A.030 and Chapter 2.90A.040, Maui County Code, relating to the allocation of water use (submitted by Madelyn D'Enbeau).
- Copies of Chapter 19.510, Maui County Code, relating to land-use applications and procedures; and "Policy Recommendations, Implementing Actions and Standards for the Kihei-Makena Region" from the Kihei-Makena Community Plan (submitted by Rob Parsons).

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Your Committee also received public testimony from nine individuals who expressed reservations about or opposition to the draft bill, primarily because of concerns relating to water and transportation infrastructure.

The Staff Planner from the Department of Planning provided your Committee with information relating to pending developments in South Maui that have already received necessary permits but have not yet been constructed. The GIS Specialist from the Office of the Mayor provided a visual exhibition of the information provided by the Staff Planner.

In a lengthy dialogue with the Director of Water Supply, your Committee attempted to ascertain the potential impact of the projected build out of Makena Resort Master Plan on Maui's water infrastructure.

The Staff Planner from the Department of Planning and the Deputy Corporation Counsel explained the basis for the Planning Director's conclusion that the requested change in zoning was not considered a "master plan" subject to the provisions of Section 19.510.080, Maui County Code.

The Chief of Planning and Development from the Department of Parks and Recreation, with the assistance of the GIS Specialist from the Office of the Mayor, showed your Committee existing and proposed recreational facilities and beach accesses in the Makena area.

Your Committee deferred consideration of the draft bill.

By correspondence dated July 10, 2001, Councilmember Jo Anne Johnson transmitted correspondence dated July 9, 2001, from Sally Raisbeck, commenting on your Committee's dialogue with the Director of Water Supply at the Land Use Committee meeting on July 5, 2001.

By correspondence dated August 1, 2001, the Chair of your Committee requested that the Planning Director provide information on existing and projected conditions in the surrounding community relating to water, transportation, and other infrastructure.

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By correspondence dated August 7, 2001, the Chair of your Committee sought the Planning Director's confirmation on the Administration's position with respect to several issues relating to the requested change in zoning.

By correspondence dated August 8, 2001, the Council Chair transmitted a copy of correspondence dated August 4, 2001, from Denise Lundblad, expressing opposition to the draft bill.

By correspondence dated August 9, 2001, the Planning Director responded to questions regarding shoreline-erosion concerns and socio-economic conditions posed by the Chair of your Committee by correspondence dated August 1, 2001. The Planning Director indicated that the other questions in the August 1st correspondence had been forwarded to various other entities for response.

By correspondence dated August 10, 2001, the Director of Public Works and Waste Management responded to questions regarding storm-runoff protection, wastewater, and transportation posed by the Chair of your Committee by correspondence to the Planning Director dated August 1, 2001.

By correspondence dated August 10, 2001, the Director of Water Supply responded to questions regarding water availability posed by the Chair of your Committee by correspondence to the Planning Director dated August 1, 2001.

By correspondence dated August 10, 2001, Paul Henson, Field Supervisor, Ecological Services, United States Fish and Wildlife Service, responded to a question posed by the Chair of your Committee by correspondence dated August 1, 2001 to the Planning Director. Specifically, Mr. Henson informed your Committee that the "Fish and Wildlife Service does not foresee any impacts to native species from the proposed change in zoning and build out of the Makena Resort."

By correspondence dated August 10, 2001, the Planning Director informed your Committee of the following:

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- The requested change in zoning, if approved, would be subject to affordable-housing requirements adopted by the County (Condition No. 10 to the draft bill) and to County's affordable-housing policy for hotel-related developments (Chapter 2.94, Maui County Code).
- There are approximately 1,557 units (410 single-family; 1,147 multi-family) that have the potential for being constructed in South Maui. This information is according to Administration records of existing Special Management Area (SMA) permits and of a project outside the SMA boundary (Swordsmen Golf Estates).
- The Council may be warranted in accepting, modifying, deleting, or adding to the conditions to the requested change in zoning recommended by the Department and the Maui Planning Commission.
- The Administration's position is that Makena Resort's application for a change in zoning is legally complete.
- The Director of Water Supply has advised that there is water for this project. If it does not come from the Central Maui Source Development Joint Venture, the developments would be placed on the waiting list like other projects.
- The Administration's position is that the requirement for a project master plan provided by Section 19.510.080, Maui County Code, does not apply to Makena Resort's application for a change in zoning because the golf course that is being rezoned to PK-4 is already developed and operating as a golf course.

By correspondence dated August 10, 2001, the Civil Defense Administrator responded to a question posed by the Chair of your Committee by correspondence dated August 1, 2001 to the Planning Director. Specifically, he indicated that the Civil Defense Agency has general concerns regarding emergency preparedness and hazard mitigation that apply to the entire County.

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By correspondence dated August 13, 2001, Gerald S. Matsui, Director of Business Development, Maui Memorial Medical Center, responded to questions posed by the Chair of your Committee by correspondence dated August 1, 2001 to the Planning Director. Specifically, he informed your Committee that South Maui's medical facilities include private physician offices, urgent care centers, and a Kaiser satellite clinic and that the average ambulance-response time in South Maui is 10-15 minutes.

By correspondence dated August 13, 2001, Neal Shinyama, Manager, Energy Delivery, Maui Electric Company, Ltd., responded to a question posed by the Chair of your Committee by correspondence dated August 1, 2001 to the Planning Director. Specifically, he informed your Committee that a new substation and a new transmission line will have to be constructed to meet the requirements of the projected build out of the Makena Resort Master Plan.

By correspondence dated August 13, 2001, the Director of Housing and Human Concerns responded to questions regarding social services in South Maui posed by the Chair of your Committee by correspondence dated August 1, 2001 to the Planning Director. Specifically, she transmitted the following documents: (1) 1997 Hawaii Housing Policy Study Update; and (2) Social Programs in South Maui.

By correspondence dated August 13, 2001, the Director of Parks and Recreation responded to questions regarding recreational assets in South Maui posed by the Chair of your Committee by correspondence dated August 1, 2001 to the Planning Director. Specifically, he transmitted a list of the area's existing and proposed parks and their respective acreage.

By correspondence dated August 14, 2001, Brian Minaai, State Director of Transportation, responded to questions posed by the Chair of your Committee by correspondence dated August 1, 2001 to the Planning Director. Specifically, he indicated that: (1) the Traffic Impact Analysis Report for the Makena Resort Master Plan indicated that traffic congestion arising from the Master Plan's projected build out would be mitigated by the expansion of Piilani Highway from two to four lanes; and (2) it will take approximately 2.5 years to complete the expansion.

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By correspondence dated August 15, 2001, the Fire Chief responded to questions regarding fire protection in South Maui posed by the Chair of your Committee by correspondence dated August 1, 2001 to the Planning Director. Specifically, he noted that a weakness in South Maui's fire protection is the existence of just a single station (the Kihei Fire Station) to cover the entire "dense, diverse area" of South Maui.

At its meeting of August 15, 2001, in Kihei, your Committee met with a GIS Specialist from the Office of the Mayor; the Chief of Planning and Development from the Department of Parks and Recreation; the Deputy Planning Director; a Staff Planner from the Department of Planning; the Land Use and Codes Administrator from the Department of Public Works and Waste Management; a Traffic Engineer from the Department of Public Works and Waste Management; the Director of Water Supply; a Deputy Corporation Counsel; Roy Figueiroa, General Manager, Makena Resort; Eric Maehara, attorney for Makena Resort; and Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., land-use consultant for Makena Resort.

Your Committee received public testimony raising concerns about water and transportation infrastructure and the protection of natural resources along the coastline from representatives of the Maui Meadows Homeowners Association, the Maui Meadows Community Association, and Maui Tomorrow, and from five individuals. Your Committee received public testimony in support of the draft bill from representatives of the Makena Community Association and Unit 2511, Local 142, International Longshore and Warehouse Union; five Makena Resort employees; and a Makena resident. In addition, your Committee received public testimony from a Kihei resident who criticized your Committee for an allegedly poor effort at publicizing the meeting in South Maui.

Your Committee received written testimony from Jon Garcia and Sam Garcia, Jr., in support of the draft bill.

The Traffic Engineer from the Department of Public Works and Waste Management informed your Committee that Piilani Highway was accommodating a maximum of about 1,200 vehicles per hour per lane and that South Kihei Road was accommodating a maximum of about 600 vehicles per hour per lane. That volume has resulted in delays and congestion. Although the two roadways

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(which are the main thoroughfares in South Maui) could technically accommodate more traffic, it is clear that the public would not tolerate much more traffic. The Traffic Engineer further informed your Committee that the expansion of Piilani Highway, from Mokulele Highway to Kilohana Drive, was expected to take approximately three years.

The Director of Water Supply informed your Committee that the projected build out of the Makena Resort Master Plan would require about 1.7 millions of gallons of water per day. He further informed your Committee that the Department did not know how much water was available throughout South Maui, but that the Wastewater Division of the Department of Public Works and Waste Management or the State Commission on Water Resource Management might be able to provide that information. He stated, however, "A fairly safe answer is that available water is limited only by the ability to utilize the ocean (through desalination)." The Director of Water Supply also informed your Committee that the current sustainable yield of the available aquifers in the Central Maui Water System was about 30 million gallons of water per day.

In response to questions, Mr. Figueiroa informed your Committee that studies had indicated that the coastline adjacent to existing Makena Resort developments had not been degraded. He also provided an overview of recreational, highway, wastewater, and other infrastructural projects that Makena Resort had funded over the years.

Your Committee deferred consideration of the draft bill.

By correspondence dated August 20, 2001, the Economic Development Coordinator responded to a question posed by the Chair of your Committee by correspondence dated August 1, 2001 to the Planning Director. Specifically, she noted that there are no precise models to identify the number of annual visitors to South Maui that are needed to ensure the area's economic sustainability.

By correspondence dated August 28, 2001, the Chair of your Committee requested that the State Department of Transportation provide a representative to answer traffic-related questions at the Committee meeting scheduled for September 4, 2001, in Kihei.

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By correspondence dated August 29, 2001, the Chair of your Committee requested that the United States Geological Survey provide a representative to answer water-related questions at the Committee meeting scheduled for September 4, 2001, in Kihei.

By correspondence dated August 29, 2001, the Director of Water Supply transmitted an Iao Aquifer status report and information on Central Maui system sources and withdrawals.

By correspondence dated August 31, 2001, Jadine Urasaki, State Deputy Director of Transportation, informed your Committee that the Department of Transportation would not be able to provide a representative at the Committee meeting scheduled for September 4, 2001, in Kihei.

By correspondence dated September 4, 2001, the Chair of your Committee transmitted written testimonies expressing reservations about or opposition to the draft bill, primarily because of concerns relating to water and transportation infrastructure, from the following individuals:

- Ave Diaz of Haiku (dated September 4, 2001)
- Cassandra Frasier of Haiku (dated September 4, 2001)
- Zoe and James Miner of Haiku (dated September 4, 2001)
- Tomas and Joan Heartfield (residence not specified) (dated September 4, 2001)
- Pamela Anna Polland of Kula (dated September 3, 2001)
- Laureen Elizabeth of Kihei (dated September 3, 2001)
- Sunny Crowley of Kihei (dated September 4, 2001)
- Rob Parsons of Haiku (dated September 3, 2001)
- Judy Laury of Haiku (dated September 4, 2001)
- Tony Leone of Makawao (dated September 3, 2001)
- J. Michael Kanouff of Kula (dated September 3, 2001)
- Tara Grace (residence not specified) (dated September 3, 2001)

At its meeting of September 4, 2001, in Kihei, your Committee met with a GIS Specialist from the Office of the Mayor; the Planning Director; the Deputy Planning Director; a Staff Planner from the Department of Planning; the Director

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of Water Supply; the Water Resources Division Head from the Department of Water Supply; the Director of Public Works and Waste Management; a Deputy Corporation Counsel; Gordon Tribble, District Chief, United States Geological Survey; Roy Figueiroa, General Manager, Makena Resort; and Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., land-use consultant for Makena Resort.

Your Committee received presentations from the Water Resources Division Head from the Department of Water Supply, who reported on Maui's existing water infrastructure and resources, and Mr. Tribble, who noted that water levels in the Iao Aquifer had continued to decline in recent years and that there were questions about the accuracy of the official figure of 20 million gallons per day as the Iao Aquifer's "sustainable yield." Mr. Tribble added that Maui "has a tremendous amount of water," but there are serious concerns regarding appropriate allocation of water on the island.

Your Committee received public testimony in support of the draft bill from representatives of the Hawaii Building and Construction Trades Council and Unit 2511, Local 142, International Longshore and Warehouse Union; four Makena residents; and five Makena Resort employees.

Your Committee received public testimony expressing reservations about or opposition to the draft bill, primarily because of concerns relating to water and transportation infrastructure, from representatives of the Maui Meadows Neighborhood Association and the Maui Meadows Homeowners Association and 22 individuals.

Your Committee received written testimony in opposition to the draft bill from Dee Larson.

Your Committee recessed its meeting until September 5, 2001.

At its reconvened meeting of September 5, 2001, in Kihei, your Committee met with a GIS Specialist from the Office of the Mayor; the Planning Director; the Deputy Planning Director; the Director of Water of Supply; the Water Resources Division Head from the Department of Water Supply; the Director of Public Works and Waste Management; a Deputy Corporation Counsel; Roy Figueiroa, General

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Manager, Makena Resort; and Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., land-use consultant for Makena Resort.

Your Committee received public testimony in support of the draft bill from one individual. Your Committee received public testimony expressing reservations about or opposition to the draft bill, primarily because of concerns relating to water and transportation infrastructure, from six individuals. In addition, a representative of the Kihei Community Association expressed concern because the Makena Resort Master Plan had not been presented to that organization.

Your Committee received written testimony in opposition to the draft bill from Cheryl Sterling of Kihei and Lucienne de Naie of Haiku.

The Chair of your Committee noted that the September 4th meeting started later than originally planned and ran late. Therefore, many individuals who had signed up to present testimony were in fact unable to testify. He read the names of those individuals into the record, as well as their positions on the draft bill, if known. He also indicated that he would transmit completed testimony sign-up forms to your Committee to be considered as written testimony.

Your Committee noted its deliberations on the draft bill were challenging, in part because of the lack of clear and reliable information regarding Maui's water resources.

Mr. Figueiroa noted that enactment of the draft bill would not in itself authorize any new development because the Maui Planning Commission would have to issue Special Management Area permits before construction could commence.

Your Committee deferred consideration of the draft bill.

By correspondence dated September 7, 2001, the Chair of your Committee transmitted testimony expressing concerns about water and transportation infrastructure from Sybil Chappellet of Hana and Linda Whittemore Lopez of Wailea.

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By correspondence dated September 10, 2001, the Chair of your Committee transmitted handwritten testimony in opposition to the draft bill from Julia Earthschild and testimony sign-up forms expressing opposition to the draft bill from the following individuals who were unable to testify on September 4th or 5th:

- Teri Mister of Puunene
- Andrea Giuliani of Kihei
- Diane Shepherd of Kihei
- Karl Johannsen of Haiku
- Kelly King of Kihei

By correspondence dated September 10, 2001, the Chair of your Committee transmitted: (1) a testimony sign-up form from Benjamin J. Berry of Kihei, who was unable to testify on September 4th or 5th, expressing support for the draft bill; and (2) testimony sign-up forms expressing opposition to the draft bill from the following individuals who were unable to testify on September 4th or 5th:

- Alana Gilmore of Kihei
- Don Gilmore of Kihei
- Theresa Fradin of Kihei
- Pamela Palencia of Kihei
- Diane Norman of Kihei
- R. Lavenda Schaff of Kihei
- Ken Elwell of Kihei
- Joan Anderson of Kihei
- John Colgan Norman of Kihei
- Noel Newbolt of Kihei
- M.A. Higgins of Kihei
- Mark Palardy of Haiku
- Linda McDonald of Kihei
- Mali King of Kihei
- Eve Hogan of Kihei
- Steven Hogan of Kihei

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- Barbara Gach of Kihei
- Richard Mealey of Kihei
- Ralph Johansen of Kihei
- Yoni Silberman of Kihei
- Lisa Woltz of Haiku
- Robert Silberman of Kihei
- Jeff Heisel of Kihei
- Anto Scolpini-Heisel of Kihei
- Helen Downey of Kihei

By correspondence dated September 10, 2001, the Chair of your Committee transmitted correspondence dated September 5, 2001, from Dr. Diane E. Shepherd, expressing opposition to the draft bill.

By correspondence dated September 26, 2001, the Director of Housing and Human Concerns informed your Committee that she did not oppose the possible fulfillment of affordable-housing conditions through the development of affordable-housing units in the Wailuku/Kahului and/or Makawao/Pukalani/Kula community-plan regions.

By correspondence dated October 12, 2001, the Director of Water Supply transmitted information relating to water demands in Central Maui.

By correspondence dated October 15, 2001, the Chair of your Committee requested that a State Department of Transportation representative attend the Committee meeting scheduled for October 18, 2001 to address transportation-related questions.

By correspondence dated October 15, 2001, the Chair of your Committee transmitted hydrologic maps for the islands of Maui and O`ahu from the State Commission on Water Resource Management.

At its meeting of October 18, 2001, your Committee met with the Chief of Planning and Development from the Department of Parks and Recreation; the Deputy Planning Director; a Staff Planner from the Department of Planning; a Traffic Engineer from the Department of Public Works and Waste Management;

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the Water Resources Division Head from the Department of Water Supply; a Deputy Corporation Counsel; Athan Adachi, Acting District Manager, Maui District, State Department of Transportation; Roy Figueiroa, General Manager, Makena Resort; Eric Maehara, attorney for Makena Resort; and Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., land-use consultant for Makena Resort.

Your Committee received public testimony in opposition to the draft bill from a representative of the Maui Meadows Homeowners Association.

Your Committee received a report on transportation-infrastructure improvements in Maui County from Charles Jencks of Wailea 670 Associates.

In response to questions, the Water Resources Division Chief of the Department of Water Supply provided information relating to Maui's water infrastructure and resources.

In response to questions, representatives of the Department of Public Works and Waste Management and the State Department of Transportation provided information on the status of South Maui roadway improvements.

Your Committee noted that the meeting agenda indicated that no action would be taken on the draft bill and that your Committee intended only to consider water and transportation concerns relating to the proposed build out of the Makena Resort Master Plan. Therefore, your Committee deferred consideration of the draft bill.

By correspondence dated October 18, 2001, Councilmember Wayne K. Nishiki submitted questions relating to Maui's water infrastructure and resources.

By correspondence dated October 19, 2001, the Chair of your Committee requested that the Director of Water Supply respond to Councilmember Nishiki's questions relating to Maui's water infrastructure and resources.

By correspondence dated October 19, 2001, the Chair of your Committee requested that a United States Geological Survey representative attend the Committee meeting scheduled for October 29, 2001 to address water-resource questions.

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By correspondence dated October 19, 2001, the Chair of your Committee requested that Linnel T. Nishioka, Deputy Director of Land and Natural Resources, Commission on Water Resource Management, attend the Committee meeting scheduled for October 29, 2001 to address water-resource questions.

By correspondence dated October 19, 2001, the Chair of your Committee requested that Wailuku Agribusiness, Inc. provide information about what is being done to enhance and protect the Iao Aquifer.

By correspondence dated October 19, 2001, the Chair of your Committee requested that the Planning Director indicate whether Makena Resort's application for change in zoning complied with Section 19.510.010, Maui County Code, "Applications and Procedures".

By correspondence dated October 22, 2001, the Chair of your Committee transmitted a summary of responses to correspondence dated August 1, 2001, transmitting 28 questions to the Planning Director requesting information on infrastructure.

By correspondence dated October 22, 2001, the Chair of your Committee requested that the Corporation Counsel indicate whether Makena Resort's application for change in zoning complied with Section 19.510.010, Maui County Code, "Applications and Procedures".

By correspondence dated October 22, 2001, the Chair of your Committee requested that the Corporation Counsel provide a legal opinion on the interpretation and applicability of Subsection 2.90A.030(A), Maui County Code, on water allocation.

By correspondence dated October 22, 2001, the Chair of your Committee requested that the Corporation Counsel provide a legal opinion regarding the Special Management Area permitting process.

By correspondence dated October 22, 2001, the Chair of your Committee requested that the Corporation Counsel provide a legal opinion regarding the applicability of the "Waiahole Ditch" opinion on the public-trust doctrine by the

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Supreme Court of Hawai`i, officially cited as In re Water Use Permit Applications, 94 Haw. 97, 9 P.3d 409, recon. denied, 2000 Haw. LEXIS 321 (2000).

By correspondence dated October 22, 2001, the Chair of your Committee requested that the Director of Water Supply provide information relating to Maui water-infrastructure improvements (e.g., new delivery systems to transport water from East Maui) and the status of the Board of Water Supply's Committee of the Whole meeting on October 22, 2001 regarding the certification of Central Maui source availability.

By correspondence dated October 22, 2001, the Chair of your Committee requested that the Director of Public Works and Waste Management and the State Director of Transportation provide information about the current status of improvements to Piilani Highway, Mokulele Highway, and other roadways that may ease the traffic impacts arising from the projected build out of the Makena Resort Master Plan and other proposed South Maui developments.

By correspondence dated October 22, 2001, the Chair of your Committee requested that the Director of Water Supply provide information relating to the Iao Aquifer and the Waiahole Ditch opinion's impact on the Central Maui Source Development Agreement.

By correspondence dated October 25, 2001, the Planning Director provided a detailed response reiterating and supporting the Administration's previously announced position that Makena Resort's application for change in zoning was legally complete.

By correspondence dated October 25, 2001, the Director of Public Works and Waste Management provided maps and updated information relating to proposed highway improvements in South Maui.

By correspondence dated October 26, 2001, Brian Minaai, the State Director of Transportation, provided a status report on highway improvements on Maui.

By correspondence dated October 26, 2001, the Director of Water Supply provided responses to some of Councilmember Nishiki's questions on Maui's

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water infrastructure and resources. The Director of Water Supply indicated that annual funding for water-infrastructure improvements for the Kihei-Makena Community Plan region is estimated at \$2 million.

By correspondence dated October 26, 2001, the Director of Water Supply indicated that the Department of Water Supply would not be able to respond to the questions submitted by the Chair of your Committee on October 22, 2001 prior to the October 29th Committee meeting.

By correspondence dated October 26, 2001, the Chair of your Committee requested Deputy Corporation Counsel Brian T. Moto's attendance at the October 29th meeting to respond to questions regarding the possible transmission of water from East Maui, Upcountry, or other parts of Maui to South Maui to support commercial development.

At its meeting of October 29, 2001, your Committee met with a GIS Specialist from the Office of the Mayor; the Chief of Planning and Development from the Department of Parks and Recreation; the Planning Director; a Staff Planner from the Department of Planning; the Deputy Director of Water Supply; the Water Resources Division Head from the Department of Water Supply; the Director of Public Works and Waste Management; two Deputy Corporation Counsel; an Executive Assistant to the Chair of your Committee; Linnel T. Nishioka, the State Deputy Director of Land and Natural Resources, State Commission on Water Resource Management; Stephen Gingerich, Hydrologist, United States Geological Survey; Roy Figueiroa, General Manager, Makena Resort; Eric Maehara, attorney for Makena Resort; and Gwen Ohashi Hiraga, Munekiyo & Hiraga, Inc., land-use consultant for Makena Resort.

Audio-visual presentations on Maui's water infrastructure and resources were made by an Executive Assistant to the Chair of your Committee; the Water Resources Division Chief of the Department of Water Supply; and Mr. Gingerich. Each presentation noted the lack of definitive statistical information about Maui's water resources and the existence of reasonable concerns that the resources may have been degraded over the years.

Your Committee received public testimony in support of the draft bill from five South Maui residents; three representatives of the Hawaii Carpenters Union;

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a representative of the Makena Community Association; and seven Makena Resort employees, including one who also read testimony supporting the draft bill from two South Maui residents. Your Committee received public testimony expressing concerns about or opposition to the draft bill from seven individuals, primarily relating to water and transportation infrastructure. In addition, your Committee received public testimony providing information about water infrastructure and resources from a member of the Board of Water Supply, expressing his personal opinions, and Linnel T. Nishioka, State Deputy Director of Land and Natural Resources, Commission on Water Resource Management, who advised that the Iao Aquifer was pumping at about 85 percent of its official sustainable yield of 20 million gallons per day (mgd). She further advised that the Commission on Water Resource Management would be reconsidering whether 20 mgd is an accurate reflection of the Iao Aquifer's actual sustainable yield. In response to your Committee's questions, Ms. Nishioka provided information on means by which sustainable-yield and other statistical data are compiled and discussed relevant legal issues, including those relating to the public-trust doctrine and the possible "designation" of the Iao Aquifer by the State Commission on Water Resource Management. In addition, she informed your Committee that Maui was in the midst of one of its worst droughts of the past 50 years.

Your Committee received the following documents:

- "Central Maui Source Development Joint Venture Presentation to the Maui County Council Planning, Land Use and Economic Development Committee", dated October 21, 1985 (submitted by Councilmember Jo Anne Johnson).
- Written testimony of Linnel T. Nishioka, State Deputy Director of Land and Natural Resources, Commission on Water Resource Management, providing comments on water-resource issues.
- A copy of Chapter 2.80A, Maui County Code, "General Plan and Community Plans" (submitted by Dick Mayer).

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- Written testimony from Sam Garcia Jr. and Jon Garcia, submitted by Ululani Correa, in support of the draft bill.
- A petition signed by 162 supporters of the draft bill.

Your Committee was presented with updated information on the status of South Maui roadway improvements by representatives of the Department of Public Works and Waste Management and the State Department of Transportation, as well as by the GIS Specialist from the Office of the Mayor, who provided a computerized display of scheduled improvements throughout Maui.

After lengthy deliberations, your Committee voted to recommend that the draft bill's conditions be revised as follows:

- Amend Condition 2 to provide that the density of the A-2 Apartment zoned areas included in Table 1 (119.719 acres) shall not exceed eight units per acre and the height of the buildings in such areas shall not exceed 45 feet.
- Incorporate a new condition to read as follows:

A minimum of 10 percent of all units shall be affordable housing units, excluding those units required to satisfy Chapter 2.94, Maui County Code, and said affordable units shall be provided concurrently with market units; provided however, that a minimum of 50 percent of the total affordable housing units shall be provided within the Kihei-Makena Community Plan region; provided further, that not less than 50 percent of said affordable housing units shall be single-family dwellings. Any revisions or amendments to this condition shall require Council approval by ordinance.

- Incorporate a new condition to read as follows:

Of those units required to satisfy Chapter 2.94, Maui County Code, said affordable units shall be provided concurrently with market

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- units; provided however, that a minimum of 50 percent of the total affordable housing units shall be provided within the Kihei-Makena Community Plan region; provided further, that not less than 50 percent of said affordable housing units shall be single-family dwellings. Any revisions or amendments to this condition shall require Council approval by ordinance.
- Incorporate a new condition to include the 22 conditions set forth in the "DECISION AND ORDER" of the State Land Use Commission on Docket No. A97-721, dated February 19, 1998, and as amended and effective June 20, 2000.
 - Incorporate a new condition to provide that the developer is authorized to develop up to 100 units upon approval of the requested change in zoning; to develop up to another 300 units upon completion of the temporary widening of Piilani Highway; to develop up to another 300 units upon completion of Phase I of the Mokulele Highway expansion; to develop up to another 300 units upon completion of Phase II of the Mokulele Highway expansion; and to complete the build out of the subject property upon the completion of the expansion of Piilani Highway into Makena; provided that, in lieu of the improvements set forth above, the developer may develop units upon the payment of a voluntary interim transportation impact fee of \$5,000 per unit; further provided, that upon the County's enactment of a permanent transportation impact fee for South Maui, the developer may develop additional units upon the payment of said per-unit fee, which shall supersede the voluntary interim transportation impact fee of \$5,000 per unit.

Your Committee voted to recommend passage of the draft bill, as revised, and filing of the communication.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating

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the revisions to the draft bill requested by your Committee, as well as technical revisions.

Your Committee is also in receipt of an agreement entitled "UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING" executed by the respective current owners of the parcels comprising the subject property, 'Ainamua Corporation, Makena 'Aina Corp., Makena Golf Corp., and Maui Prince Hotel, LLC.

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2001), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND PORTIONS OF LAND ZONING MAP NOS. 5 AND 514 TO ESTABLISH A-2 APARTMENT DISTRICT, B-2 COMMUNITY BUSINESS DISTRICT, B-R RESORT COMMERCIAL DISTRICT, H-M HOTEL DISTRICT, PK-1 NEIGHBORHOOD PARK DISTRICT, PK-4 GOLF COURSE PARK DISTRICT, R-1 AND R-3 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR LANDS SITUATED AT MAKENA, MAUI, HAWAII", PASS FIRST READING and BE ORDERED TO PRINT;
2. That the County Clerk RECORD the UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING; and
3. That County Communication No. 00-242 be FILED.

Adoption of this report is respectfully requested.

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ALAN M. ARAKAWA **Chair**

DAIN P. KANE **Member**

PATRICK S. KAWANO **Vice-Chair**

MICHAEL J. MOLINA **Member**

ROBERT CARROLL **Member**

WAYNE K. NISHIKI **Member**

G. RIKI HOKAMA **Member**

CHARMAINE TAVARES **Member**

JO ANNE JOHNSON **Member**