

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

March 11, 2005

**Committee
Report No.**

05-29

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

Chair and Members:

Your Land Use Committee, having met on February 16, 2005 (site inspection and meeting), makes reference to County Communication No. 04-13, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI/MAKENA COMMUNITY PLAN AND LAND USE MAP FROM MULTI-FAMILY TO SINGLE FAMILY FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII". The purpose of the proposed bill is to approve a Community Plan Amendment for eight acres at 915 South Kihei Road, identified for real property tax purposes as Tax Map Key No. (2) 3-9-001:009, as part of the 20-acre, 92-unit (formerly 95-unit) Waipuilani Estates single-family residential project.

Your Committee notes that the remaining 12-acre portion of the property is already designated Single Family in the Kihei-Makena Community Plan and does not require a Community Plan Amendment. That portion of the property is referred to as Phase 1, consisting of 60 units, while the 8-acre portion is referred to as Phase 2.

Your Committee notes that County Communication No. 04-13 was referred to the prior Council's Planning and Land Use Committee on January 16, 2004.

Your Committee further notes that the Maui Planning Commission met on the application on November 10, 2003 and November 25, 2003.

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 10, 2003, MEETING", and the "MAUI PLANNING DEPARTMENT'S RECOMMENDATION REPORT TO THE MAUI PLANNING COMMISSION November 10, 2003, MEETING", voted to recommend approval of the proposed bill on November 25, 2003.

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Your Committee also notes that, by correspondence dated December 29, 2003 from the Planning Director to Doyle G. Betsill, President, Betsill Brothers Construction, Inc. (the applicant), the Department of Planning provided the Maui Planning Commission's recommendation to the Maui County Council for approval of the proposed Community Plan Amendment, along with the conditions for the Special Management Area (SMA) permit for Phase 1 of the project.

By correspondence dated January 30, 2004, the Council Chair transmitted correspondence dated January 29, 2004, from the Planning Director, transmitting minutes of the Maui Planning Commission meeting of November 10, 2003.

By correspondence dated March 23, 2004, Doyle G. Betsill, President, Betsill Brothers Construction, Inc., requested the Planning and Land Use Committee's prompt consideration of the proposed bill.

By correspondence dated March 25, 2004, the Chair of the Committee provided scheduling information to Doyle G. Betsill, President, Betsill Brothers Construction, Inc.

Your Committee notes that the subject property was conveyed by South Kihei, Inc. to Waipuilani Associates, LLC by Quitclaim Deed dated April 28, 2004, and recorded with the Bureau of Conveyances on May 25, 2004.

By correspondence dated May 17, 2004, the Chair of the Committee transmitted correspondence dated May 13, 2004, from Dennis Boehlje, Land Use Planner, Betsill Brothers Construction, Inc., regarding Waipuilani Estates' affordable components.

By correspondence dated July 7, 2004, Councilmember Joseph Pontanilla requested the Committee's prompt consideration of the proposed bill.

By correspondence dated July 7, 2004, Councilmember Joseph Pontanilla transmitted correspondence dated June 25, 2004, from Doyle G. Betsill, President, Betsill Brothers Construction, Inc., expressing concern about the Committee's failure to schedule the subject matter.

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By correspondence dated September 9, 2004, the Department of the Corporation Counsel transmitted a copy of the "Complaint for Declaratory Judgment" filed by Waipuilani Associates, LLC against the County, the Director of Public Works and Environmental Management, and the Planning Director. The lawsuit seeks a declaratory judgment that the proposed single-family residential subdivision on the eight-acre portion of the parcel conforms to, and is consistent with, the Kihei-Makena Community Plan Multi-Family designation.

By correspondence dated September 21, 2004, the Chair of the Committee informed the Corporation Counsel that the proposed bill would be considered at the Committee meeting of October 12, 2004.

By correspondence dated October 8, 2004, the Chair of the Committee informed various Kihei residents that the proposed bill would be considered at the Committee meeting of October 12, 2004.

By correspondence dated October 12, 2004, the Chair of the Committee provided information regarding the complaint filed by Waipuilani Associates, LLC.

At its meeting of October 12, 2004, the Committee met with the Director of Public Works and Environmental Management; the Deputy Planning Director; a Planner, Department of Planning; the Corporation Counsel; the Chief of Litigation, Department of the Corporation Counsel; Doyle G. Betsill, President, Betsill Brothers Construction, Inc.; Gary W. Zakian, Esq., Betsill Brothers Construction, Inc.; and Christopher Hart of Chris Hart & Partners, Inc.

The Committee received written testimony in support of the proposed bill from Doyle G. Betsill on behalf of Waipuilani Associates, LLC.

The Committee received public testimony in support of the proposed bill from Doyle G. Betsill, President, Betsill Brothers Construction, Inc. and in opposition to the proposed bill from Ruth Dodson of Kihei. Mr. Betsill touted Waipuilani Estates' affordable components. Ms. Dodson cited potential flooding concerns in the area.

The Committee voted to convene an executive meeting for the purpose of consulting with legal counsel on liability issues in the matter, pursuant to Section 92-5(a)(4), Hawaii Revised Statutes.

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At its executive meeting, the Committee met with the Deputy Planning Director; a Planner, Department of Planning; the Corporation Counsel; and the Chief of Litigation, Department of the Corporation Counsel.

Following the executive meeting, the Committee reconvened in regular session.

The Committee deferred further consideration of the proposed bill pending a site inspection.

By correspondence dated October 20, 2004, the Chair of the Committee transmitted a newspaper article dated October 15, 2004, entitled "No court action on Betsill's complaint".

At its meeting of January 21, 2005, the Council referred County Communication No. 04-13 to your Land Use Committee (County Communication No. 05-13).

By correspondence dated January 24, 2005, the Planning Director transmitted minutes of the Maui Planning Commission meeting of November 25, 2003.

By correspondence dated February 16, 2005, B. Martin Luna, Esq., Carlsmith Ball LLP, provided additional information concerning the project on behalf of Waipuilani Associates, LLC.

At its site inspection of February 16, 2005, your Committee met on the subject property with the Planning Director; a Planner, Department of Planning; the Director of Public Works and Environmental Management; a Captain, Department of Police; the Chief of Litigation, Department of the Corporation Counsel; a Deputy Corporation Counsel; an Investigator, Department of the Corporation Counsel; Doyle G. Betsill, President, Betsill Brothers Construction, Inc.; Dennis Boehlje, Planner, Betsill Brothers Construction, Inc.; Gary W. Zakian, Esq., attorney for Betsill Brothers Construction, Inc.; Mike Summers, Land Use Planner, Chris Hart & Partners, Inc.; and Warren S. Unemori, Engineer, Warren S. Unemori Engineering, Inc.

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There was no public testimony.

Your Committee received landscape maps of the proposed project from Mr. Summers, accompanied by a brief orientation of the site, the surrounding properties, and the proposed layout of the project. Your Committee discussed roadway, ingress and egress, traffic, drainage, bikeway, lot size, and project density issues, noting particular concerns over the fact that the eight-acre portion of the parcel is within the flood plain.

Your Committee deferred consideration of the matter pending a meeting in the Council Chamber later in the day.

At its meeting of February 16, 2005, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Housing and Human Concerns; the Director of Public Works and Environmental Management; the Director of Water Supply; the Planning Program Manager, Department of Water Supply; a Captain, Department of Police; the Chief of Litigation, Department of the Corporation Counsel; a Deputy Corporation Counsel; Doyle G. Betsill, President, Betsill Brothers Construction, Inc.; Dennis Boehlje, Planner, Betsill Brothers Construction, Inc.; Gary W. Zakian, Esq., attorney for Betsill Brothers Construction, Inc.; Blaine Kobayashi, Esq., attorney for Waipuilani Associates, LLC; Christopher Hart of Chris Hart & Partners, Inc.; Mike Summers, Land Use Planner, Chris Hart & Partners, Inc.; and Warren S. Unemori, Engineer, Warren S. Unemori Engineering, Inc. Phillip Rowell, Traffic Engineer, Phillip Rowell & Associates, was available by speaker phone.

There was no public testimony.

Your Committee received an electronic presentation containing an overview of the project from Mr. Hart, along with a printed copy of the presentation and landscape plans for the site. Mr. Hart also displayed posterboard site plans for the project during the meeting.

The Planner provided a short historical perspective of the application.

The Director of Housing and Human Concerns informed your Committee that the Department is in support of the project, that the applicant has voluntarily agreed to provide affordable housing as a project component, and that an

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affordable housing agreement for Phase I of the project has been executed. For the subject 32-lot portion (Phase 2), the breakdown of the 16 affordable units is as follows: four units at \$216,000 (80 percent of median income), six units at \$216,000-\$290,600 (between 80 percent and 120 percent of median income), and six units at \$290,600-\$339,000 (between 120 and 140 percent of median income).

Your Committee voiced ongoing concerns about the definition of affordability. Your Committee discussed whether the affordable units could be restricted based on residency since no government funds are being used. Your Committee questioned whether the applicant was reserving any of the affordable units for its own use.

Mr. Boehlje clarified that the applicant does not intend to reserve any of the affordable units, but will offer them on a first-come, first-serve basis. The applicant may be willing to try to incorporate into the market units an occupancy agreement. The affordable units are intermixed with the market-rate units, and their buildout will occur concurrently. Your Committee was also informed that a ten-year buyback period will be imposed on each of the affordable units.

Your Committee discussed traffic-calming devices and the use of standard roadway widths.

Your Committee discussed the design of some of the models. Due to flood plain considerations, all of the units in Phase 2 will be on post and pier. Mr. Unemori informed your Committee that the base flood elevation height ranges from zero on the upper end of the property to three feet close to S. Kihei Road. Accordingly, the finished floor elevation for a unit in Phase 2 could be as high as five feet above the existing ground elevation.

The applicant confirmed that it would contribute to traffic impact fees if they are in effect at the time building permits are approved.

Your Committee questioned the value of the park improvements and whether they exceeded the in-lieu payment that might otherwise be assessed. The applicant estimated that the value exceeded the in-lieu fee of \$8,700 per unit in that area.

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The Chief of Litigation provided your Committee with an overview of the pending lawsuit. The complaint for declaratory judgment seeks a ruling (1) that the proposed single-family subdivision conforms to the makai eight acres currently designated under the Kihei-Makena Community Plan as Multi-Family; or (2) that the zoning of the property takes precedence over the Kihei-Makena Community Plan. She further advised your Committee of the status of proceedings, including the dismissal of the individual defendants, the pending motion to dismiss the complaint against the County, and the pending motion for summary judgment filed by Waipuilani Associates, LLC. She clarified that the lawsuit is not one alleging a takings has occurred, but is limited to requesting that the court interpret a particular provision of the Maui County Code. She also advised that a subdivision in the SMA itself requires consistency.

The Planning Program Manager informed your Committee that current water availability for Central Maui is between one and two million gallons per day. The applicant bears the risk that there may not be sufficient water available at the time an allocation is sought.

The Director of Public Works and Environmental Management updated your Committee on the status of the North-South Collector Road. Work is currently being done on the segment of the road from Waipuilani to Kaonoulu, which includes this project, with hopes of finishing permitting sometime this year.

The Director informed your Committee that the Department does not have a traffic signal at the intersection of Kulanihakoi Street and S. Kihei Road budgeted. Its emphasis has been to complete construction of the North-South Collector Road to provide connectivity from North Kihei to Central Kihei, and to install traffic signals at the intersection of Kaonoulu and S. Kihei Road, and at Kaonoulu and Piilani Highway.

The Director noted that the Department has reviewed the applicant's drainage plan and found it to be acceptable. The plan would only accommodate the increase in runoff caused by this particular development, which is what is required by the Department's rules.

He further noted that the Department has received an appropriation to update the Kihei Drainage Master Plan. Once that is done, the Department will return to the Council to seek alternative funding sources to implement the plan.

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Your Committee requested a timetable for the update to the Kihei Drainage Master Plan.

Your Committee questioned whether the Department had recommended any mitigation measures for traffic at the intersection of Kulanihako'i Street and Piilani Highway. The Director noted that the intersection is under the jurisdiction of the State Department of Transportation. The Department did review the applicant's traffic impact analysis.

Your Committee further discussed the proposed entrance road from Kulanihako'i Street into the project. The Director of Public Works and Environmental Management informed your Committee that the applicant's intent is to construct the roadways to County standards and dedicate them to the County.

The Captain stated that the project would add 900 more trips in South Maui, which would increase service levels for the Department. He opined that restricted access from S. Kihei Road is a good idea, and that a single-family subdivision usually results in less service calls than a multi-family subdivision.

Your Committee recommended that the proposed bill be revised to change the year from (2004) to (2005).

Your Committee voted to recommend passage of the revised proposed bill on first reading 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 your Committee's requested revision.

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

1. That Bill No. _____ (2005), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI/MAKENA COMMUNITY PLAN AND LAND USE MAP FROM MULTI-FAMILY TO SINGLE FAMILY FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT; and

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2. That County Communication No. 04-13 be FILED.

Adoption of this report is respectfully requested.

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