

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 18, 2005

Committee
Report No.

05-158

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

Chair and Members:

Your Land Use Committee, having met on November 2, 2005, makes reference to County Communication No. 05-278, 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 RURAL FOR PROPERTY SITUATED AT HAIKU, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from the Lionel Santos Trust for a District Boundary Amendment from Agricultural District to Rural District to allow for a three-lot subdivision on 5.284 acres in Haiku, Maui (TMK: (2) 2-7-02:010).

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT HAIKU, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from the Lionel Santos Trust for a Change in Zoning from Interim District to RU-0.5 Rural District to allow for a three-lot subdivision on 5.284 acres in Haiku, Maui (TMK: (2) 2-7-02:010).

Your Committee notes that the Maui Planning Commission held a public hearing on the application on June 14, 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 JUNE 14, 2005 MEETING" (Department's Report), and the conclusions and

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recommendation presented in the document entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION JUNE 14, 2005 MEETING", voted to recommend approval of the application on June 14, 2005, subject to the following zoning condition:

- “1. That in the event that historic sites (human skeletal remains, etc.) are identified during construction activities, all work needs to cease in the immediate vicinity of the find, the find needs to be protected from additional disturbance, and the State Historic Preservation Office needs to be contacted immediately on Maui or on Oahu.”

By correspondence dated September 8, 2005, the Vice-Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed bills to delete the reference to a portion only of the subject tax map key, and to also incorporate nonsubstantive revisions to the proposed Change in Zoning bill.

By correspondence dated September 12, 2005, the Department of the Corporation Counsel transmitted the following revised proposed bills, incorporating the requested revisions:

1. A revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT HAIKU, MAUI, HAWAII".
2. A revised proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT HAIKU, MAUI, HAWAII".

At its meeting, your Committee met with the Planning Program Administrator, Current Planning Division, Department of Planning; the Deputy Director of Public Works and Environmental Management; the Corporation Counsel; Lionel Santos, Trustee; and Lawrence, Ing, Esq., attorney for the Lionel Santos Trust (applicant).

There was no public testimony.

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Mr. Ing informed your Committee that the requested land use approvals are consistent with the Community Plan, that they will have no adverse impacts, and that they will enable Mr. Santos to keep the property in his family. He noted that the property has been in Mr. Santos's family for over 100 years.

The Planning Program Administrator gave a brief overview of the application, noting that two letters expressing concerns had been received after the Department's Report had been completed, and that a single condition of zoning relating to historic sites had been recommended by the Maui Planning Commission. He further noted that the applicant had provided a photographic analysis of the property, and circulated the photos for your Committee's review. He also confirmed that the Change in Zoning application involves a change to the RU-0.5 Rural District, despite some initial references in the Maui Planning Commission minutes to a change to RU-1.

Your Committee requested that the Department of Planning provide a copy of the two letters of concern.

Your Committee noted that the applicant is on a wait list for water meters. Your Committee questioned whether the proposed bills would have any impact on the applicant's position on the wait list, and requested that a written response to the question be sought from the Department of Water Supply.

The Deputy Director informed your Committee that the applicant had a subdivision application that expired in January 2004. Currently, there is no active subdivision application on file with the Department.

Your Committee questioned the designations of surrounding properties and whether other parcels in the area were designated rural. The Planning Program Administrator noted that page 6 of the Department's Report reflects surrounding rural/residential uses. He further noted that the applicant's proposal is to subdivide the property into three lots to be conveyed to other family members.

Your Committee questioned whether a condition could be placed on the Change in Zoning application to ensure that the property is not subdivided beyond the contemplated three lots. The Corporation Counsel informed your Committee that the application is not being processed under the "family subdivision" provisions of Title 18 of the Maui County Code. He further opined that options to restrict further subdivision of the property are very limited. The Corporation Counsel noted that zoning classifications

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provide for minimum lot size. Accordingly, if property is zoned RU-0.5, in theory there is the potential to subdivide the property into as many 0.5-acre lots as can be accommodated. He noted that limitations on the ability to further subdivide property are not usually incorporated as conditions. The Corporation Counsel opined that if your Committee were so inclined, it might consider declining to rezone the entire parcel RU-0.5, and only rezone portions of the 5.284-acre parcel. Your Committee did not pursue this option.

Your Committee voted to recommend passage of the revised proposed bills, recordation of a unilateral agreement reflecting the applicable zoning condition, and filing of the communication.

Your Committee is in receipt of an agreement entitled "Unilateral Agreement and Declaration for Conditional Zoning" executed by the Lionel Santos Trust.

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 STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO RURAL FOR PROPERTY SITUATED AT HAIKU, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That Bill No. _____ (2005), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM INTERIM DISTRICT TO RU-0.5 RURAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT HAIKU, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;
3. That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning"; and
4. That County Communication No. 05-278 be FILED.

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Adoption of this report is respectfully requested.

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ROBERT CARROLL **Chair**

DAIN P. KANE **Member**

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