

REQUEST FOR LEGAL SERVICES

Date: November 26, 2018
From: Kelly King, Chair
Planning Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: COMMUNITY PLAN AMENDMENT AND CONDITIONAL PERMIT FOR MAUI OCEANFRONT INN AND SARENTO'S ON THE BEACH RESTAURANT (KIHEI) (PC-22)

Background Data: Please review revised proposed bills and, if appropriate, approve them as to form and legality. With respect to the revised proposed Conditional Permit bill, please see new Conditions 7-9. Signed, hard copies are requested with your response.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature <u>Kelly King</u> Kelly King	Contact Person <u>Traci Fujita/Leslee Mathews</u> (Telephone Extension: <u>7687 or 7662</u>)
--	---

- ROUTINE (WITHIN 15 WORKING DAYS)
- PRIORITY (WITHIN 10 WORKING DAYS)
- RUSH (WITHIN 5 WORKING DAYS)
- URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): November 30, 2018
REASON: Posting on December 11, 2018 Council agenda

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
--------------	----------------	-----

TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR 1.119 ACRES SITUATED AT KIHEI, MAUI, HAWAII, IDENTIFIED AS TAX MAP KEY (2) 3-9-004:029

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 2.80B, Maui County Code, the Kihei-Makena Community Plan and Land Use Map is hereby amended from Single-Family to Hotel for property situated at Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:029, comprising 1.119 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Community Plan Map No. CP-531, attached hereto as Exhibit "B" and made a part hereof.

SECTION 2. Part III.C.1. of the Kihei-Makena Community Plan, adopted by Ordinance 2641 (1998), relating to Planning Standards, Land Use Standards, is amended by adding a new paragraph g, to read as follows:

"g. The hotel and restaurant located on the property situated at Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:029, shall not increase their current capacity, density, height, or footprint from what is in existence as of the date of this ordinance."

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

pc:misc:022acpabil02:ldm

EXHIBIT "A"

GOVERNMENT LOT

Situates on the west side of Piilani Highway,
adjoining Grant 13225 to Yasuko N. Watanabe
and Grant 1959 to Mahi

Kamaole, Wailuku (Kula), Maui, Hawaii

Being portion of the Government Land of Kamaole

Beginning at the southeast corner of this parcel of
land, at the northeast corner of Grant 13225 to Yasuko N.

Watanabe and on the west side of Piilani Highway, the coordi-
nates of said point of beginning referred to Government Survey
Triangulation Station "POU O KALI" being 9644.91 feet South
and 20,033.00 feet West, as shown on Government Survey Regis-
tered Map 3005 and running by azimuths measured clockwise from
True South:-

1. 84° 30' 356.83 feet along Grant 13225 to Yasuko N.
Watanabe and Grant 1959 to
Mahi;
2. 171° 30' 132.00 feet along Government Beach Reserve;
3. 264° 30' 383.09 feet along Government Beach Reserve;
4. 3° 07' 84.52 feet along the west side of Piilani
Highway;
5. Thence along the west side of Piilani Highway, on a curve
to the left having a radius of
1939.86 feet, the chord azimuth
and distance being: 2° 23' 50"
48.71 feet to the point of
beginning and containing an
AREA OF 1.119 ACRES.

SOUTH KIHEI ROAD

TO MAKENA

3'07'00" — 84.52

2'23'50" — 48.71

R=1939.86

8.44+31 FT SOUTH
E.003 00 FT. 00" REF. TO TRAIL 0.147 A

LOT 2
TMK:(2) 3-9-004: 149
WESTERN APARTMENT SUPPLY & MAINTENANCE--(LESSEE)
STATE OF HAWAII--(OWNER)

(261.32)
383.09

TMK:
(2) 3-9-004: 029

Grant 13225
to Yasuko N. Watanabe
(C.S.F. 12284)

356.83

Grant 1959

TMK:(2) 3-9-004: 025
HALE HUI KAI
(OWNER)

(121.77)
784'30'00"

84'30'00"

171'30" — 132.00



TAX MAP KEY
2ND DIV 3-9-004:029

AREA
1.119 Acres

COMMUNITY PLAN MAP NO. 531

COMMUNITY PLAN AMENDMENT - KIHEI, MAUI, HAWAII
FROM SINGLE FAMILY (SF) RESIDENTIAL TO HOTEL (H)

APPROVED _____
COUNTY CLERK DATE

PUBLIC HEARING: NOVEMBER 15, 2008
ADOPTED - COUNCIL
ADOPTED - MAYOR:
ORDINANCE:

APPROVED *Kathleen Ryan O'Neil* 7-2-09
PLANNING DIRECTOR DATE

DATE:

SCALE: 1" = 50'

OFFICE OF THE COUNTY CLERK

CP-531

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO HOTEL FOR 1.119 ACRES SITUATED AT KIHEI, MAUI, HAWAII, IDENTIFIED AS TAX MAP KEY (2) 3-9-004:029

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 2.80B, Maui County Code, the Kihei-Makena Community Plan and Land Use Map is hereby amended from Single-Family to Hotel for property situated at Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:029, comprising 1.119 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Community Plan Map No. CP-531, attached hereto as Exhibit "B" and made a part hereof.

SECTION 2. Part III.C.1. of the Kihei-Makena Community Plan, adopted by Ordinance 2641 (1998), relating to Planning Standards, Land Use Standards, is amended by adding a new paragraph g, to read as follows:

"g. The hotel and restaurant located on the property situated at Kihei, Maui, Hawaii, identified for real property tax purposes as tax map key (2) 3-9-004:029, shall not increase theirits current capacity, density, height, or footprint from what is in existence as of the date of this ordinance."

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

pc:misc:022acpabill02:ldm

ORDINANCE NO. _____

BILL NO. _____ (2018)

A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO RUBY & SONS HOSPITALITY, LLC, FOR THE CONSTRUCTION AND USE OF AN OFF-SITE PARKING LOT WITHIN THE COUNTY PARK DISTRICT FOR PROPERTY SITUATED AT KIHEI, MAUI, HAWAII

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to Ruby & Sons Hospitality, LLC for the construction and use of an off-site parking lot within the County Park District. The site is identified for real property tax purposes as tax map key (2) 3-9-004:149, comprised of approximately 35,932 square feet of land situated at Kihei, Maui, Hawaii.

SECTION 2. The granting of this Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered.
2. That the Conditional Permit shall be valid for a period of two (2) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this two-year period may be granted pursuant to Section 19.40.090, Maui County Code.
3. That the subject Conditional Permit shall not be transferred unless the Maui County Council approves a transfer by ordinance.
4. That Ruby & Sons Hospitality, LLC, its successors and permitted assigns, shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during

the entire period of the Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending Ruby & Sons Hospitality, LLC, and County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of the Conditional Permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Ruby & Sons Hospitality, LLC of said rights; and (2) all actions, suits, damages and claims by whomever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui an additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department of Planning and shall include the applicable tax map key and permit numbers.

5. That Ruby & Sons Hospitality, LLC shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
6. That Ruby & Sons Hospitality, LLC shall provide at least fifty-one (51) parking stalls designated for public beach access parking and no more than thirty-four (34) parking stalls designated for hotel and restaurant parking on tax map key (2) 3-9-004:149.
7. That Ruby & Sons Hospitality, LLC and Sarento's on the Beach, LLC shall be responsible to prevent the guests, employees, invitees, and agents of the hotel and restaurant from using, at a minimum, 51 parking stalls dedicated for use by the public for public beach access.
8. That Ruby & Sons Hospitality, LLC shall be responsible for the maintenance and upkeep of the parking lot on tax map key (2) 3-9-004:149.
9. That Ruby & Sons Hospitality, LLC shall be responsible for clearly marking with signage, at a minimum, 34 contiguous parking stalls on tax map key (2) 3-9-004:149 designated for use by the hotel and

the restaurant and, at a minimum, 51 parking stalls designated for public beach access.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

pc:misc:022acpbill04:ldm