COUNCIL OF THE COUNTY OF MAUI

LAND USE COMMITTEE

July 22, 2011

Committee Report No. _____

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 15, 2011, makes reference to County Communication No. 10-62, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE KIHEI-MAKENA COMMUNITY PLAN AND LAND USE MAP FROM MULTI-FAMILY TO HOTEL FOR PROPERTY SITUATED AT 455 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII, TAX MAP KEY NO. (2) 3-9-041:001". The purpose of the proposed bill is to grant a request from Nona Lani Cottages LLC to amend the Kihei-Makena Community Plan and Land Use Map from Multi-Family to Hotel for approximately 2.27 acres situated at 455 South Kihei Road, Kihei, Maui, Hawaii ("property"). The community plan amendment will establish consistency between the community plan designation and the past and present vacation rental use.

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-2 RESIDENTIAL DISTRICT TO THE H-1 HOTEL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 455 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII, TAX MAP KEY NO. (2) 3-9-041:001". The purpose of the proposed bill is to grant a request from Nona Lani Cottages LLC to conditionally change the zoning for the property from R-2 Residential District to H-1 Hotel District. The change in zoning will establish consistency between the zoning and the past and present vacation rental use.

Your Committee received a revised proposed Change in Zoning bill incorporating nonsubstantive revisions.

Received at BFED meeting on 08/04/22
(Councilmember Paltin)

According to the Department of Planning, Nona Lani Cottages LLC is owned by the David Y. S. Kong Trust and the Winona K. Kong Trust. The Kong family has owned the property since 1944, and has operated Nona Lani Cottage LLC, with 12 transient vacation rental ("TVR") units, since 1972. David Kong and Winona Kong continue to reside in the main residence on the property.

According to the applicant's consultant, Christopher Hart, Chris Hart & Partners, Inc., the TVR use on the property is an existing nonconforming use. The applicant does not intend to develop the property any further. The applicant seeks to establish conformity and consistency between the existing TVR use and the Kihei-Makena Community Plan and County zoning.

Although the applicant does not intend to further develop the property at this time, your Committee expressed concern that H-1 Hotel zoning would allow intensive development on the property. Mr. Hart assured your Committee that, because the property is located in a Special Management Area ("SMA"), any future development would require an SMA permit from the Maui Planning Commission. At that time, the commission would be able to address concerns related to potential impacts of proposed development.

Cherlyn Kong, the daughter of David and Winona Kong, indicated that because the property is zoned R-2 Residential, it is assessed at the residential rate for real property tax purposes. Your Committee questioned why the County would assess the property at the residential rate when a TVR exists on the property. Your Committee also noted that the property is in the "Homeowner" tax classification, and questioned how the property, which is owned by a corporation, qualifies for the home exemption under Section 3.48.450, Maui County Code ("MCC").

By correspondence dated June 27, 2011, the Director of Finance indicated that pursuant to Section 3.48.305, MCC, the real property tax classification is determined primarily by zoning. Because the property is zoned R-2 Residential, it is taxed at the residential rate, regardless of the TVR use. If the zoning is changed to H-1 Hotel, then the real property tax classification will change to the hotel classification, resulting in hotel tax rate. The Director also clarified that on October 18, 2010, the property changed ownership from the Kongs to Nona Lani Cottages, LLC. Due to the change in ownership, the home exemption was canceled.

Your Committee voted 5-0 to recommend passage of the proposed bills on first reading and filing of the communication. Committee Chair Carroll, Vice-Chair White, and members Baisa, Cochran, and Hokama voted "aye". Committee members Couch, Mateo, Pontanilla, and Victorino were excused.

Your Committee is in receipt of two revised proposed bills, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Land Use Committee RECOMMENDS the following:

1. That Bill No. _____ (2011), 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 HOTEL FOR PROPERTY SITUATED AT 455 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII, TAX MAP KEY NO. (2) 3-9-041:001", be PASSED ON FIRST READING and be ORDERED TO PRINT;

2. That Bill No. _____ (2011), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-2 RESIDENTIAL DISTRICT TO THE H-1 HOTEL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 455 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII, TAX MAP KEY NO. (2) 3-9-041:001", be PASSED ON FIRST READING and be ORDERED TO PRINT; and

3. That County Communication No. 10-62 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.

Robert Carroll
ROBERT CARROLL, Chair

lu:cr:11038aa:kmh

ORDINANCE NO. _____

BILL NO. _____ (2011)

A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-2 RESIDENTIAL DISTRICT TO H-1 HOTEL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT 455 SOUTH KIHEI ROAD, KIHEI, MAUI, HAWAII, TAX MAP KEY NO. (2)3-9-041:001

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

SECTION 1. Pursuant to Chapters 19.14 and 19.510, Maui County Code, a change in zoning from R-2 Residential District to H-1 Hotel District (Conditional Zoning) is hereby granted for that certain parcel of land situated at Kihei, Maui, Hawaii, and identified for real property tax purposes by Tax Map Key Number (2) 3-9-041:001, comprising approximately 2.27 acres, and more particularly described in Exhibit "A", attached hereto and made a part hereof, and in Land Zoning Map No. L-5112, which is on file in the Office of the County Clerk of the County of Maui, and by reference made a part hereof.

SECTION 2. Pursuant to Section 19.510.050, Maui County Code, the zoning granted by this ordinance is subject to the conditions set forth in Exhibit "B", attached hereto and made a part hereof, and the Unilateral Agreement and Declaration for Conditional Zoning, attached hereto and made a part hereof as Exhibit "C".

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

APPROVED AS TO FORM
AND LEGALITY:

JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui
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EXHIBIT "A"

All of that certain parcel of land (being all of the land described in and covered by Land patent Grant Number 12,958 to Ah Moy Leong Kong, also known as Cecelia Ah Moy Kong), situate at Waiakoa, in the District of Kula, Island of Maui, State of Hawaii, being a portion of the Government Land of Waiakoa, and also being Lot 19 of the Waiakoa House Lots, and being more particularly described as follows:

BEGINNING at a pipe at the southwest corner of this lot, the northwest corner of Lot 20, Waiakoa House Lots, and on the east side of Kihei-Makena Road (40 feet wide), the coordinates of said point of beginning referred to a + on rock (Kalaepohaku) at seashore and on the boundary between the lands of Pulehunui and Waiakoa being 3160.73 feet South and 870.22 feet East, and the coordinates of said + on rock (Kalaepohaku) referred to Government Survey Triangulation Station "Puu-o-Kali" being 17875.5 feet North and 25734.0 feet West, as shown on Government Survey Registered Map 3028, and running by azimuths measured clockwise from True South:

1.	164°	47'	30"	289.67	feet along the east side of Kihei-Makena Road to a pipe;
2.	254°	47'	30"	358.95	feet along Lot 18, Waiakoa House Lots to a pipe;
3.	352°	17'		165.30	feet along Lot 4, Waiakoa Homesteads, Makai Section (Grant 7108 to Leialoha) to a pipe;
4.	348°	10'		126.00	feet along same to a pipe;
5.	74°	47'	30"	329.97	feet along Lot 20, Waiakoa House Lots to the point of beginning. Containing an area of 2.27 acres.

Being the same premises conveyed to Grantor herein by deed dated May 9, 1990, recorded in the Bureau of Conveyances of the State of Hawaii as Document No. 90-084264.

EXHIBIT "B"

CONDITIONS OF ZONING

1. That, in order to conserve water, and all to the satisfaction of either the Department of Water Supply or the Department of Planning, Nona Lani Cottages LLC shall: (1) establish a regular program to maintain fixtures to prevent leaks; and (2) in the event of any landscape alterations use climate-adapted native plants to the extent feasible.

2. That, in order to mitigate the site's contribution to direct and cumulative traffic impacts in the event of future development on the site, and all to the satisfaction of the Department of Public Works (DPW), in the event of future development on the site, Nona Lani Cottages LLC shall make physical and/or pro rata contributions to street improvements in the vicinity of the site and also to regional transportation improvements, all as determined appropriate by the County at the time of said future development.

3. That, in order to mitigate potential impacts from future development on the property, and to the satisfaction of DPW, plans for future development on the property shall be submitted to DPW when available, comments shall be obtained from DPW, and DPW's comments shall be addressed.

LAND COURT SYSTEM | REGULAR SYSTEM

Return By Mail ( ) Pickup ( ): To:
Office of the County Clerk
County of Maui
200 South High Street
Wailuku, Hawai`i 96793

Total Number of Pages: 9

Affects Tax Map Key (Maui) (2) 3-9-041:001

UNILATERAL AGREEMENT AND DECLARATION FOR CONDITIONAL ZONING

THIS INDENTURE, made this _____ day of JUN 2 8 2011, _____, by NONA LANI COTTAGES LLC, a Hawaii limited liability company, whose address is 455 South Kihei Road, Kihei, Hawaii 96753, hereinafter referred to as the "DECLARANT", and who is the owner of that certain parcel located at Kihei, Maui, Hawai`i, comprised of approximately 2.27 acres, and identified for real property tax purposes by Tax Map Key No(s). (2) 3-9-041:001, hereinafter referred to as "PARCEL" (or "PROPERTY").

WITNESSETH:

WHEREAS, the Council of the County of Maui, State of Hawai`i, hereinafter referred to as "Council", is considering the establishment of zoning for the Parcel, comprised of approximately 2.27 acres which is more particularly described in Exhibit "1", which is attached hereto and made a part hereof, and which is more particularly identified in Land Zoning Map No. L-5112, which is on file in the Office of the County Clerk of the County of Maui; and

EXHIBIT "C"

WHEREAS, the Council recommends through its Land Use Committee, Committee Report No. _____, that said establishment of zoning be approved for passage on first reading subject to certain conditions pursuant to Section 19.510.050, Maui County Code; and

WHEREAS, the Declarant has agreed to execute this instrument pursuant to the conditional zoning provisions of Section 19.510.050, Maui County Code;

NOW, THEREFORE, the Declarant makes the following Declaration:

1. That this Declaration is made pursuant to the provisions of Section 19.510.050, Maui County Code relating to conditional zoning;

2. That until written release by the County of Maui, the Parcel, and all parts thereof, is and shall be held subject to the covenants, conditions and restrictions which shall be effective as to and shall run with the land as to the Parcel, from and after the recording of this Declaration with the Bureau of Conveyances or the Land Court of the State of Hawai`i, without the execution, delivery or recordation of any further deed, instrument, document, agreement, declaration, covenant or the like with respect thereto by the Declarant, the County of Maui, or any heir, devisee, executor, administrator, personal representative, successor, and assign; that the acquisition of any right, title or interest in or with respect to the Parcel by any person or persons, entity or entities, whomsoever, shall be deemed to constitute the acceptance of all of the covenants, conditions and restrictions of this Declaration by such person or persons, entity or entities; and that upon any transfer of any right, title or interest in or with respect to the Parcel the same shall be subject to, and the transferee shall assume and be bound and obligated to observe and perform all of the covenants, conditions and restrictions of this Declaration;

3. That this Declaration and all of the covenants, conditions and restrictions contained herein shall continue to be effective as to and run with the land in perpetuity, or until the Declarant notifies the appropriate County Department that any of said covenants, conditions and restrictions are satisfied by the Declarant, and the appropriate County Department verifies the satisfaction and provides a written release of the covenant, condition or restriction;

4. That the term "Declarant" and any pronoun in reference thereto, wherever used herein, shall be construed to mean the singular or the plural, the masculine or the feminine, or the neuter, and vice versa, and shall include any corporation, and shall be held to mean and include the "Declarant", the Declarant's heirs, devisees, executors, administrators, personal representatives, successors, and assigns;

5. That the Declaration shall become fully effective on the effective date of the zoning ordinance approving the establishment of H-1 Hotel District zoning and this Declaration shall be recorded in the Bureau of Conveyances or Land Court of the State of Hawai`i;

6. That the Declarant agrees to develop said Parcel in conformance with the conditions set forth in Exhibit "2", which is attached hereto and made a part hereof and which shall be made a part of the zoning ordinance;

7. That the conditions imposed are reasonable and rationally relate to the objective of preserving the public health, safety and general welfare and such conditions fulfill the need for the public service demands created by the proposed use;

AND IT IS EXPRESSLY UNDERSTOOD AND AGREED that until released in writing by the County, the conditions imposed in this Declaration shall run with the land identified hereinabove and shall bind and constitute notice to all subsequent lessees, grantees, assignees, mortgagees, lienors and any other persons who claim an interest in said land, and the County of Maui shall have the right to enforce this Declaration by appropriate action at law or suit in equity against all such persons, provided that the Declarant or its successors and assigns may at any time file a petition for the removal of the conditions and terminate this Unilateral Agreement, such petition to be processed in the same manner as petitions for change in zoning.

IN WITNESS WHEREOF, the undersigned has executed this Declaration the day and year first above written.

DECLARANT:

NONA LANI COTTAGES LLC

DAVID Y.S. KONG, SR.
Its Manager

WINONA K. KONG
Its Manager

CHERLYN J. KONG
Its Manager

APPROVED AS TO FORM AND LEGALITY:

JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

STATE OF HAWAI`I)
) SS.
COUNTY OF MAUI)

On this 28th day of June, 2011, before me personally appeared DAVID Y.S. KONG, SR., to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawai`i
My Commission expires: ALYSSA L TAKUSHI 08-211
NOTARY PUBLIC, STATE OF HAWAII
MY COMMISSION EXPIRES 06/29/2012

ALYSSA L. TAKUSHI NOTARY COMMISSION # 08-211 PUBLIC STATE OF HAWAII

NOTARY PUBLIC CERTIFICATION

Doc. Date: June 28, 2011 Undated at # Pages: 9

Notary Name: ALYSSA L TAKUSHI 08-211 NOTARY PUBLIC, STATE OF HAWAII MY COMMISSION EXPIRES 06/29/2012 Judicial Circuit: Second

Document Description: Unilateral Agreement and Declaration for Conditional Zoning

ALYSSA L. TAKUSHI NOTARY COMMISSION # 08-211 PUBLIC STATE OF HAWAII [Seal]

Notary Signature:

Date: JUN 28 2011

STATE OF HAWAI`I)
) SS.
COUNTY OF MAUI)

On this 28th day of June 2011, before me personally appeared WINONA K. KONG, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Alyssa L Takushi

Notary Public, State of Hawai`i
My Commission expires:

ALYSSA L TAKUSHI 08-211
NOTARY PUBLIC, STATE OF HAWAII
MY COMMISSION EXPIRES 06/29/2012

ALYSSA L. TAKUSHI NOTARY COMMISSION # 08-211 PUBLIC STATE OF HAWAII

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NOTARY PUBLIC, STATE OF HAWAII
MY COMMISSION EXPIRES 06/29/2012

Document Description: Unilateral Agreement and Declaration for Conditional Zoning

Notary Signature: Alyssa L Takushi

Date: JUN 28 2011

ALYSSA L. TAKUSHI NOTARY COMMISSION # 08-211 PUBLIC STATE OF HAWAII [Official Stamp]

STATE OF HAWAI`I)
) SS.
COUNTY OF MAUI)

On this 28th day of June, 2011, before me personally appeared CHERLYN J. KONG, to me personally known, who being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable, in the capacities shown, having been duly authorized to execute such instrument in such capacities.

Notary Public, State of Hawai`i
My Commission expires: ALYSSA L TAKUSHI 08-211
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Document Description: Unilateral Agreement and Declaration for conditional Zoning

Notary Signature:

Date: JUN 28 2011

ALYSSA L. TAKUSHI NOTARY COMMISSION # 08-211 PUBLIC STATE OF HAWAII [Stamp or Seal]

EXHIBIT "1"

All of that certain parcel of land (being all of the land described in and covered by Land patent Grant Number 12,958 to Ah Moy Leong Kong, also known as Cecelia Ah Moy Kong), situate at Waiakoa, in the District of Kula, Island of Maui, State of Hawaii, being a portion of the Government Land of Waiakoa, and also being Lot 19 of the Waiakoa House Lots, and being more particularly described as follows:

BEGINNING at a pipe at the southwest corner of this lot, the northwest corner of Lot 20, Waiakoa House Lots, and on the east side of Kihei-Makena Road (40 feet wide), the coordinates of said point of beginning referred to a + on rock (Kalaepohaku) at seashore and on the boundary between the lands of Pulehunui and Waiakoa being 3160.73 feet South and 870.22 feet East, and the coordinates of said + on rock (Kalaepohaku) referred to Government Survey Triangulation Station "Puu-o-Kali" being 17875.5 feet North and 25734.0 feet West, as shown on Government Survey Registered Map 3028, and running by azimuths measured clockwise from True South:

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END OF EXHIBIT "1"

EXHIBIT "2"

CONDITIONS OF ZONING

1. That, in order to conserve water, and all to the satisfaction of either the Department of Water Supply or the Department of Planning, Nona Lani Cottages LLC shall: (1) establish a regular program to maintain fixtures to prevent leaks; and (2) in the event of any landscape alterations use climate-adapted native plants to the extent feasible.

2. That, in order to mitigate the site's contribution to direct and cumulative traffic impacts in the event of future development on the site, and all to the satisfaction of the Department of Public Works (DPW), in the event of future development on the site, Nona Lani Cottages LLC shall make physical and/or pro rata contributions to street improvements in the vicinity of the site and also to regional transportation improvements, all as determined appropriate by the County at the time of said future development.

3. That, in order to mitigate potential impacts from future development on the property, and to the satisfaction of DPW, plans for future development on the property shall be submitted to DPW when available, comments shall be obtained from DPW, and DPW's comments shall be addressed.

END OF EXHIBIT "2"