

**COUNCIL OF THE COUNTY OF MAUI**  
**LAND USE COMMITTEE**

February 17, 2012

**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 February 1, 2012, makes reference to County Communication 11-332, from the Deputy Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING TODD AND DEBRA PRESEULT A CONDITIONAL PERMIT TO ALLOW BUSINESS/OFFICE USES WITHIN THE COUNTY RURAL DISTRICT, FOR PROPERTY SITUATED AT KULA, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from Todd and Debra Preseault ("Applicants") for a five-year Conditional Permit to allow for business and office uses known as the Waiakoa Hale Offices on approximately 1.296 acres within the RU-0.5 Rural District at 4230 Lower Kula Road, Kula, Maui, Hawaii (TMK: (2) 2-3-37:009).

Your Committee notes that the Department of Planning and the Maui Planning Commission recommended approval of the Conditional Permit with seven conditions.

Your Committee further notes that the Council may grant a Conditional Permit, pursuant to Chapter 19.40, Maui County Code ("MCC"), to allow for a use not specifically permitted within the subject property's zoning district, provided that certain criteria are met.

Your Committee revised the proposed bill to correct the zoning for the subject property by changing it from Rural District to RU-0.5 Rural District.

According to the Applicants' consultant, Rory Frampton, the Applicants are proposing to convert and expand the existing structures on the property into business and professional offices. He explained that the Applicants intend to use the subject property for business and professional offices similar to those permitted in the B-CT Country Town Districts; and "personal services establishments" as defined in Section 19.04.040, MCC.

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Mr. Frampton acknowledged that restrictive covenants established in 1963 limit the subject property to residential purposes only. However, he provided examples of how the restrictive covenants have been disregarded over the years. Your Committee notes that a restrictive covenant is a private agreement among a land grantor and a land grantee, typically limiting use of real property.

Your Committee questioned the Deputy Corporation Counsel about the extent to which the Council should consider the restrictive covenants. The Deputy Corporation Counsel opined that the Council has the authority to determine the merits of the Conditional Permit without regard to the restrictive covenants. The Council may consider how much weight, if any, to give the restrictive covenants in its consideration of the Conditional Permit application for business and office uses.

Mr. Frampton informed your Committee that the buildings on the subject property housed the original Morihara Store in the late 1930s until the store moved to its present location elsewhere in Kula. Your Committee found it significant that the subject property was historically used for commercial purposes. Your Committee also found it significant that a school, a community center, and a church operate near the subject property. Your Committee determined that the proposed business and office uses would be compatible with the surrounding area.

Your Committee voted 7-1 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Carroll, Vice-Chair White, and members Baisa, Couch, Mateo, Pontanilla and Victorino voted "aye". Committee member Cochran voted "no". Committee member Hokama was excused.

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING TODD AND DEBRA PRESEALT A CONDITIONAL PERMIT TO ALLOW BUSINESS/OFFICE USES WITHIN THE COUNTY RU-0.5 RURAL DISTRICT, FOR PROPERTY SITUATED AT KULA, MAUI, HAWAII" approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions as well as nonsubstantive revisions.

