

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

July 25, 2008

**Committee
Report No.**

08-80

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

Chair and Members:

Your Land Use Committee, having met on August 1, 2007, October 3, 2007, July 2, 2008, and July 7, 2008, makes reference to County Communication No. 06-314, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO OS-2 OPEN SPACE DISTRICT FOR PROPERTY SITUATED AT WAIHEE, MAUI, HAWAII".

The purpose of the proposed bill is to grant a request from RDD LLC (RDD) for a Change in Zoning from Agricultural District to OS-2 Open Space District for approximately 17.559 acres along Kahekili Highway in Waihee, Maui, Hawaii (TMK: (2) 3-2-09:001 (por.)).

Your Committee notes that the Maui Planning Commission held a public hearing on the application on October 10, 2006.

Your Committee further notes that at its meeting of October 10, 2006, the Maui Planning Commission, after reviewing the findings presented in the document entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION OCTOBER 10, 2006 MEETING" (Department's Report) and the "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION OCTOBER 10, 2006 MEETING", voted to recommend approval of the Change in Zoning.

Your Committee notes that, according to the Department's Report, at pages 6 and 14, a 14-lot agricultural subdivision application was filed with the County in August 2005, with lots ranging in size from 3 to 20 acres, and collectively comprising the entire TMK: (2) 3-2-09:001, or approximately 113 acres. The subdivision application was returned due to a lack of consistency in the land use designations of the subject 17.559-acre portion of the parcel (the subject property), which is designated Open Space on the Wailuku-Kahului Community Plan map, but zoned Agricultural District. According to the Department's Report, should the requested Change in Zoning be

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granted, RDD will resubmit the agricultural subdivision application to the County, and the subject property, while remaining undeveloped, will be part of the proposed 14-lot subdivision, referred to as the Waihee Mauka Project. The Department notes in its report that RDD intends to continue the existing macadamia nut operation on the property.

Your Committee further notes that Section 19.07.020, Maui County Code (MCC), establishes two zoning categories within the Open Space District, the OS-1 and OS-2 zoning categories, with OS-2 zoning providing for active types of land uses. Section 19.07.030, MCC, includes agriculture as a principal use in the OS-2 District.

At its meeting of January 5, 2007, the Council referred County Communication No. 06-314 to your Committee (County Communication No. 07-4).

By correspondence dated January 18, 2007, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed bill as follows: (1) by correcting the Tax Map Key number reference; and (2) by changing the parenthetical reference to the year of the bill.

By correspondence dated January 19, 2007, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO OS-2 OPEN SPACE DISTRICT FOR PROPERTY SITUATED AT WAIHEE, MAUI, HAWAII", incorporating the requested revisions.

At its meeting of August 1, 2007, your Committee met with the Planning Program Administrator, Current Planning Division, Department of Planning; a Planner, Department of Planning; the Deputy Director of Public Works; a Deputy Corporation Counsel; and Vince Bagoyo, Jr., agent for RDD.

There was no public testimony.

The Planner provided a computer-generated presentation, a copy of which is contained within the County Communication. She summarized background information concerning the application, noting that no development is planned for the subject property, but that it would be part of the proposed agricultural subdivision if the application is approved. She showed photographs of the site and of an adjacent agricultural processing plant. She advised that the property is currently leased to Kapuna Ranch LLC. The Planner described the Open Space District and the purposes of the

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OS-1 and OS-2 zoning categories. Finally, she noted that issues concerning the application included the potential for traffic as well as issues relating to archaeological and cultural resources. She advised that the State Department of Land and Natural Resources had revised its comments to indicate that the proposed action would not affect any historic archaeological properties, upon learning that the subject property would remain unchanged.

The Planner advised that the current Agricultural District zoning does permit the existing use of the subject property as a macadamia nut orchard.

Your Committee discussed traffic issues in the area.

Your Committee deferred the matter pending further consideration.

By correspondence dated September 7, 2007, Councilmember Bill Kauakea Medeiros transmitted a copy of photographs of the project area, which he had received on September 6, 2007, from Vince Bagoyo, Jr., agent for RDD.

By correspondence dated October 2, 2007, Melvin Fukunaga opposed the request, citing concerns regarding further development in the Waihee area.

At its meeting of October 3, 2007, your Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works; an Acting Captain, Department of Police; a Deputy Corporation Counsel; Vince Bagoyo, Jr., agent for RDD; and Dennis Boehlje, Vice President of Planning and Development, Betsill Brothers Construction, Inc.

Your Committee received public testimony from Jan Yagi Buen, President, Waihee Community Association (WCA), noting that residents in the area had voiced concerns over further development, traffic and school congestion, water, and infrastructure. She stated that the applicant had yet to present the project to WCA. Your Committee also received public testimony from a resident of Waihee, citing concerns over impacts to the community as a result of development.

The Acting Captain advised that traffic is a major concern in the area. Your Committee discussed traffic issues affecting the community.

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Mr. Boehlje informed your Committee that RDD will meet with WCA to discuss its plans in the Waihee area. Your Committee encouraged RDD to arrange to meet with WCA at its next available meeting.

Mr. Boehlje advised that the purpose of the proposed Change in Zoning is to make the zoning for the property consistent with the Community Plan. He noted that RDD had been informed that it could not proceed with its proposed agricultural subdivision without the Change in Zoning. He further noted that RDD's preliminary subdivision map had been rejected due to the inconsistency, and that RDD was not certain it would pursue the subdivision at this juncture.

The Planner advised that permitted uses in the proposed Open Space District are much more restrictive than those allowed in the County Agricultural District, that the applicant would continue to farm the property, and that the zoning would allow for the preservation of two cultural sites on the property.

Your Committee discussed the application of the "sliding scale" provision to the subject property, under Section 19.30A.030, MCC, which dictates the number of lots that may be created from a lot, or portion thereof, that is in the County Agricultural District. Your Committee questioned the impact, if any, to the number of potential lots that could be created if the proposed Change in Zoning is approved.

Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated October 4, 2007, Jan Yagi Buen, President, WCA, transmitted a copy of her testimony from your Committee's meeting of October 3, 2007.

By correspondence dated January 4, 2008, the Planning Director advised that, should the Change in Zoning be approved, the number of lots allowed through the subdivision would not change, and a maximum of 15 lots could be created.

By correspondence dated January 30, 2008, Dwayne Betsill, Managing Member, RDD, reported on his appearance before WCA on January 17, 2008, to respond to questions concerning the subject application. He noted that the subject property is currently used for macadamia nut tree cultivation, grazing, and taro cultivation, as well as a drainage way. He further noted that these uses would continue into the future under the proposed OS-2 zoning, if approved, and any subsequent agricultural subdivision.

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By correspondence dated June 25, 2008, Jan Yagi Buen, former President, WCA, commented on correspondence dated January 30, 2008, from Dwayne Betsill; and transmitted a copy of her correspondence dated February 26, 2008, as President of the WCA, advising your Committee that WCA supports the proposed Change in Zoning to Open Space.

At its meeting of July 2, 2008, your Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works; a Sergeant, Department of Police; a Deputy Corporation Counsel; Dwayne Betsill, Managing Member, RDD; and Vince Bagoyo, Jr., agent for RDD.

There was no public testimony.

The Planner provided a brief overview of the application.

Mr. Betsill explained that the 113-acre parcel contains approximately 12 acres of dryland taro and approximately 45 acres of macadamia nut trees. He advised that RDD plans to keep raising macadamia nuts and taro, but that it will be up to the purchasers of the lots to decide whether they will continue those practices.

Mr. Betsill further advised that the area designated Open Space is currently a drainage way and will be preserved as such. He reiterated that the parcel could be subdivided into a maximum of 15 lots.

Your Committee discussed traffic concerns and potential mitigation measures in the area. Mr. Betsill noted that the agricultural subdivision is designed to have a roadway through it. The Sergeant explained that any further development would have an impact on traffic, but that the Department does not believe the contemplated agricultural subdivision would have a significant impact.

Your Committee experienced technical difficulties with the audio equipment and recessed its meeting to July 7, 2008.

At its reconvened meeting of July 7, 2008, your Committee met with the Planning Director; a Planner, Department of Planning; the Deputy Director of Public Works; a Deputy Corporation Counsel; Dwayne Betsill, Managing Member, RDD; and Vince Bagoyo, Jr., agent for RDD.

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Your Committee continued its discussion of traffic concerns and potential traffic mitigation alternatives in the vicinity of the subject property, including options for improvements along Waiehu Beach Road. The Deputy Director noted that a limiting factor with respect to road-widening prospects is the bridge across Iao Stream, and that the portion of Kahekili Highway fronting the parcel is State-owned.

Mr. Betsill informed your Committee that he has been working with David Goode, whose project is above Waihee village, on possible roadway bypass options. Mr. Betsill advised that RDD would be willing to provide frontage along its parcel for that purpose. Your Committee requested that Mr. Betsill provide information concerning the status of a possible bypass road mauka of the project and the potential use of a cane haul road adjacent to the project to mitigate traffic congestion.

Your Committee also encouraged RDD to continue to meet with the Waihee community concerning the progress of the project.

Your Committee recommended that technical revisions be incorporated into the revised proposed bill.

Your Committee voted to recommend passage of the revised proposed bill 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 the requested technical revisions.

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

1. That Bill No. _____ (2008), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO OS-2 OPEN SPACE DISTRICT FOR PROPERTY SITUATED AT WAIHEE, MAUI, HAWAII", be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**; and
2. That County Communication No. 06-314 be **FILED**.

Adoption of this report is respectfully requested.

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