

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

March 23, 2005

**Committee  
Report No.**

05-51

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 23, 2005, makes reference to County Communication No. 04-40, from Councilmember Jo Anne Johnson, relating to land-use approvals for the proposed Maui Preparatory Academy (MPA) in Napili (TMK: (2) 4-3-001:001 (portion)).

Your Committee notes that County Communication No. 04-40 was referred to the prior Council's Planning and Land Use Committee at the Council meeting of February 6, 2004.

By correspondence dated March 4, 2004, the Chair of the Committee transmitted correspondence dated March 1, 2004, from the Corporation Counsel, providing a legal opinion relating to the requirement of an environmental assessment for a Council-initiated community plan amendment.

Your Committee notes that the Planning and Land Use Committee previously reported on this matter through Committee Report No. 04-76, which recommended that a proposed resolution entitled "REFERRING TO THE MAUI PLANNING COMMISSION BILLS TO, RESPECTIVELY, ENACT A COMMUNITY PLAN AMENDMENT, A CHANGE IN ZONING, AND A STATE LAND USE DISTRICT CLASSIFICATION AMENDMENT FOR PROPERTY SITUATED AT NAPILI, MAUI, HAWAII FOR THE PROPOSED MAUI PREPARATORY ACADEMY" be adopted. At its meeting of May 7, 2004, the Council adopted Committee Report No. 04-76 (Resolution No. 04-62). The proposed bills effectuate the Community Plan Amendment, State Land Use District Classification Amendment, and Change in Zoning for the subject property.

At its meeting of November 30, 2004, the Planning and Land Use Committee recommended that County Communication No. 04-40 be referred to the Council Chair for the term beginning January 2, 2005, for a recommendation as to referral or other disposition.

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By correspondence dated December 8, 2004, the Council Chair transmitted correspondence dated December 2, 2004, from the Planning Director, notifying the Council members that Resolution No. 04-62 had been scheduled for consideration before the Maui Planning Commission on January 11, 2005, and that the Final Environmental Assessment had been reviewed by the Maui Planning Commission on November 23, 2004 and a "Finding of No Significant Impact" had been issued.

Your Committee notes that the Maui Planning Commission held a public hearing on the proposed Community Plan Amendment, State Land Use District Classification Amendment, and Change in Zoning on January 11, 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 January 11, 2005 MEETING" and the "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION January 11, 2005 MEETING", voted to recommend approval of the proposed bills.

By correspondence dated January 18, 2005, the Planning Director transmitted the Maui Planning Commission's recommendation on Resolution No. 04-62, applicable maps, and proposed bills to effectuate the Community Plan Amendment, State Land Use District Classification Amendment, and Change in Zoning.

At its meeting of January 21, 2005, the Council referred County Communication No. 04-40 to your Land Use Committee (County Communication No. 05-12).

By correspondence dated January 25, 2005, the Planning Director transmitted the following revised proposed bills, incorporating corrected metes and bounds descriptions and reflecting the size of the subject property as 14.970 acres:

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1. A revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WEST MAUI COMMUNITY PLAN FROM AGRICULTURAL TO PUBLIC/QUASI-PUBLIC FOR PROPERTY SITUATED AT NAPILI, MAUI, HAWAII FOR THE PROPOSED MAUI PREPARATORY ACADEMY". The purpose of the revised proposed bill is to approve a Community Plan Amendment for approximately 14.970 acres situated at Napili, Maui for the Maui Preparatory Academy.
2. A revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT NAPILI, MAUI, HAWAII FOR THE PROPOSED MAUI PREPARATORY ACADEMY". The purpose of the revised proposed bill is to approve a State Land Use District Classification Amendment for approximately 14.970 acres situated at Napili, Maui for the Maui Preparatory Academy.
3. A revised proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM AGRICULTURAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT FOR PROPERTY SITUATED AT NAPILI, MAUI, HAWAII FOR THE PROPOSED MAUI PREPARATORY ACADEMY". The purpose of the revised proposed bill is to approve a Change in Zoning for approximately 14.970 acres situated at Napili, Maui for the Maui Preparatory Academy.

By correspondence dated February 18, 2005, Michael T. Munekiyo, Project Manager, Munekiyo & Hiraga, Inc., transmitted: (1) correspondence dated January 11, 2005, from the Director, State Department of Transportation (State DOT), to the Planning Director, containing comments on the application; and (2) correspondence dated January 21, 2005, from Mr. Munekiyo to the Director, State DOT, responding to the concerns expressed.

By correspondence dated February 22, 2005, the Chair of your Committee transmitted correspondence dated February 22, 2005, from Michael T. Munekiyo, Project Manager, Munekiyo & Hiraga, Inc., transmitting a copy of the Final

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Environmental Assessment – Proposed Maui Preparatory Academy, dated November 2004.

At its meeting of February 23, 2005, your Committee met with the Planning Director; two Planners, Department of Planning; the Deputy Director of Public Works and Environmental Management; a Captain, Department of Police; the Corporation Counsel; a Deputy Corporation Counsel; a Planner, Statewide Transportation Planning Office, State DOT; a District Engineer, Maui District, Highways Division, State DOT; Thomas D. DiNoto, President, Maui Preparatory Academy; Michael T. Munekiyo, Project Manager, Munekiyo & Hiraga, Inc.; and Randall H. Endo, Esq., Vice President, Community Development, Maui Land & Pineapple Company, Inc. (MLP).

Your Committee received public testimony from four individuals, all of whom supported the MPA. The testifiers generally spoke in favor of a private school alternative for West Maui, and the goal of opening the school in September 2005. Among the testifiers were Tom Rosenquist, President of the MPA, and Randall H. Endo, Esq., Vice President, MLP. Mr. Endo also submitted written testimony in support of the school and stated that MLP would work towards resolving access easement issues for the mauka landowners with the State DOT. Your Committee also received written testimony from Ezekiel I. Kalua, Executive Director, West Maui Taxpayers Association, in support of the MPA.

Your Committee received a subdivision map of the project site from Mr. Munekiyo.

Mr. Munekiyo gave your Committee a brief overview of the project, indicating that MLP is phasing out the use of dormitory rooms at the site and has donated property to MPA for school use. He noted the location of the proposed classroom facilities and play fields, and stated the current projected enrollment for Grades 6 through 12 is 200 students. He also displayed a posterboard of the site for your Committee's review.

Mr. DiNoto informed your Committee of the reasons the facility is needed, noting that time is critical because contracts must be entered into within the next 30 days.

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The Planner provided a brief overview of the application, noting that the appeal period for the environmental assessment had expired just several days prior to the public hearing before the Maui Planning Commission. Following the Maui Planning Commission's meeting, the Department of Planning received comments dated January 11, 2005 from the State DOT. The applicant has been working with the State DOT in an effort to resolve those concerns.

Your Committee asked the Department of the Corporation Counsel to opine whether Chapter 2.80B of the Maui County Code (MCC) properly applies to the request for a community plan amendment, noting that the provision requires that a public hearing be conducted in the relevant community plan area.

The Deputy Corporation Counsel responded that the transitional language in Ordinance No. 3166 is not entirely clear for Council-initiated community plan amendments. Because of the way in which this request was initiated, the Department considers the date of the first committee meeting, or March 2, 2004, as the operative date. Accordingly, the Council should not apply Chapter 2.80B, MCC, which became effective on March 4, 2004, and the proposed bill should be revised to reflect that it is being processed pursuant to Chapter 2.80A, MCC.

Your Committee further discussed the intent of Ordinance No. 3166 and what constitutes an application under Chapter 2.80B, MCC.

The Corporation Counsel focused the inquiry on the subject request and on a prior request which was also Council-initiated. The Corporation Counsel opined that Chapter 2.80B does not apply to either request, both of which originated prior to the effective date of Ordinance No. 3166. Because no application was filed, the question becomes how the transition rule in Section 4 should apply, which states "This ordinance shall take effect upon its approval. This ordinance shall not be applicable to applications filed and complete prior to the effective date of this ordinance.". He opined that it was reasonable to use the date of the Committee meeting at which the Committee recommended the adoption of the resolution proposing the land use changes as the date to deem the "application" filed and complete. This interpretation is consistent with the spirit and intent of the transition rule. In this case, the proposal had reached a certain level of completion and maturity by the time Ordinance No. 3166 became effective.

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Based on the Corporation Counsel's opinion, your Committee proceeded to consider the application as one not subject to the public hearing requirement under Chapter 2.80B.

A Planner, Statewide Transportation Planning Office, State DOT; and a District Engineer, Maui District, Highways Division, State DOT, informed your Committee that the State DOT is satisfied that its concerns have been resolved, including concerns relating to access for landlocked parcels on the mauka side of the highway. The District Engineer confirmed that it would be acceptable to include the responses identified in correspondence dated January 21, 2005 from Michael T. Munekiyo to the Director, State DOT, as change in zoning conditions.

Your Committee questioned the sufficiency of the retention basins to handle waters from the improved area. The Deputy Director of Public Works and Environmental Management advised that water will be channeled towards the retention basins and that the Department believes the basins will be sufficient.

Your Committee questioned whether periodic soil sampling would be conducted due to the prior use of pesticides and other chemicals on the property and whether the presence of residual chemicals would pose a safety concern for attendees of the school. The Deputy Director responded that residual chemicals would likely end up in the retention basins. He was not aware of a soil analysis having been reviewed by the Department.

The Planning Director noted that a very thorough environmental assessment was done on this property, and reviewed and accepted by the Maui Planning Commission.

Your Committee questioned whether it would be appropriate to require an underpass to connect the primary athletic component of the property to the academic component. Your Committee discussed traffic on an existing cane road, which would vary depending on pineapple harvesting activity.

Your Committee further discussed underground storage tanks on the property and the content of those tanks. Mr. Endo advised your Committee that a Phase 1 analysis has been conducted on the 14.9-acre site, and soil testing has also been completed, showing no significant levels of pesticides or other chemicals on the site. Your Committee also discussed runoff issues.

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Your Committee requested that Mr. Endo provide the brand names of the fertilizers stored on the property.

Mr. Endo provided your Committee with a copy of correspondence dated November 17, 2004, from Jeffrey Kermode, Site Investigator, Vuich Environmental Consultants, Inc. to Tom DiNoto, Maui Preparatory Academy, summarizing the results of an Environmental Soil Sampling Survey conducted on the subject property.

Your Committee noted that a request had been made by the United States Department of Agriculture, Natural Resources Conservation Service, that an operations and maintenance plan be developed for the project's drainage system. Mr. Endo informed your Committee that the drainage basin north of Lot 2 is a low point, and that the project site should be protected from baseyard runoff by the basin. He noted that people have been living in the dormitory facilities for over 30 years, and there has never been an incident regarding a chemical scare. MLP plans to continue regular pineapple cultivation operations. Your Committee discussed evacuation plans in the event of an emergency. Your Committee also requested that Mr. Endo research and respond whether, with respect to the Napili Villa project, there is an agreement in place regarding the maintenance of the detention basin.

Your Committee questioned the role MLP would play in mitigating hazardous waste issues arising on the property. To date, MLP has not discussed funding of any measures of that nature. Mr. Endo responded that MLP would provide assistance to mitigate such issues.

The Captain informed your Committee that the MPA would probably alleviate traffic. The Department agrees that there should be deceleration lanes and that the lights should be adjusted.

Your Committee discussed the Council's ability to condition change in zoning requests, regardless of whether they are initiated by the Council or by a private applicant. Your Committee notes that it has previously imposed conditions on Council-initiated change in zoning applications. Your Committee discussed the wording of Maui County Code Section 19.510.050. The Planner, Department of Planning, opined that there is no applicant in a Council-initiated

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change in zoning request, and that conditions are therefore unauthorized. Your Committee requested that the Department of the Corporation Counsel provide a written opinion prior to first reading of the proposed bill concerning the Council's ability to impose conditions on Council-initiated change in zoning applications.

Your Committee recommended that the proposed community plan amendment bill be further revised to delete the reference to Chapter 2.80B of the Maui County Code, and that the proposed change in zoning bill be further revised to refer to and incorporate proposed conditions and to make nonsubstantive revisions.

The proposed change in zoning conditions recommended by your Committee are as follows:

1. That the mitigation plan for hazardous substances be implemented by Maui Preparatory Academy (MPA) and/or Maui Land & Pineapple Company, Inc. (MLP) and be sent to the Department of Health, Environmental Management Division, for review prior to issuance of a certificate of occupancy.
- 2a. MLP is proposing to serve lands mauka of Honoapiilani Highway (including landlocked parcels) via an extension of Napilihau Street. While the time frame for the roadway extension beyond that point needed to serve the MPA has not yet been determined by MLP, it is expected that provision of this alternative for mauka access will enable necessary improvements to be made at the Napilihau Street-Honoapiilani Highway intersection without affecting the "access permitted" location to the north.
- 2b. MLP and MPA will coordinate implementation milestones with the State Department of Transportation, Highways Division (Highways Division).
- 2c. MLP is agreeable to providing the required right-of-way (as needed) to ensure that viable geometrics at the Napilihau Street-Honoapiilani Highway intersection can be provided.



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- 2d. Modifications to traffic signal timing will be coordinated with the Highways Division.
- 2e. Intersection recommendations set forth in the Traffic Impact Assessment Report for the Napilihau Street-Honoapiilani Highway intersection will be implemented in accordance with agreed-upon plans and milestones, as discussed in Condition No. 2b.
- 2f. The timeframes for milestone achievement will be coordinated with the Highways Division. Should there be a need to accelerate improvements, both MLP and MPA will work with the Highways Division to address schedule modification requirements.
3. Improvements affecting the Honoapiilani Highway will be designed to ensure that storm water volumes and patterns will not adversely affect the highway and its operations.
4. As may be needed, a use/occupancy agreement or easement will be developed and executed for utilities within the Honoapiilani Highway right-of-way.
5. MLP and MPA will work with the Highways Division to determine applicable requirements for fair-share contributions to regional and local transportation improvements.
6. Construction plans review and construction work affecting the Honoapiilani Highway will be coordinated with the Highways Division and its Maui District Office.

Your Committee voted to recommend passage of the revised proposed bills on first reading and filing of the communication.

Your Committee is in receipt of the further revised proposed bills, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's requested revisions.

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

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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 WEST MAUI COMMUNITY PLAN FROM AGRICULTURAL TO PUBLIC/QUASI-PUBLIC FOR PROPERTY SITUATED AT NAPILI, MAUI, HAWAII FOR THE PROPOSED MAUI PREPARATORY ACADEMY", 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 AMEND THE STATE LAND USE DISTRICT CLASSIFICATION FROM AGRICULTURAL TO URBAN FOR PROPERTY SITUATED AT NAPILI, MAUI, HAWAII FOR THE PROPOSED MAUI PREPARATORY ACADEMY", be PASSED ON FIRST READING and be ORDERED TO PRINT;
3. That Bill No. \_\_\_\_\_ (2005), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO CHANGE THE ZONING FROM AGRICULTURAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT NAPILI, MAUI, HAWAII FOR THE PROPOSED MAUI PREPARATORY ACADEMY", be PASSED ON FIRST READING and be ORDERED TO PRINT;
4. That the County Clerk RECORD the "Unilateral Agreement and Declaration for Conditional Zoning"; and
5. That County Communication No. 04-40 be FILED.

Adoption of this report is respectfully requested.

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**ROBERT CARROLL** Chair

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