

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

March 23, 2005

**Committee
Report No.**

05-52
As Amended

NOTE: The recommendation contained in this committee report was amended by the Council at its meeting of April 15, 2005, by deleting the bracketed material and underscoring the new material. This committee report was then adopted as amended.

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

Chair and Members:

Your Land Use Committee, having met on March 2, 2005 (site inspection and meeting) and March 10, 2005, makes reference to the following:

1. County Communication No. 04-295, from the Planning Director, transmitting the following:
 - a. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM PUBLIC/QUASI-PUBLIC TO SINGLE-FAMILY FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII".

The purpose of the proposed bill is to amend the Community Plan and Land Use Map for a two-acre portion of an approximately 28.7-acre parcel located at Waikapu, Wailuku, Maui (portion of TMK No. (2) 3-5-004:025), bringing the entire parcel within the Single-Family Community Plan designation, to facilitate the development of a 108-lot residential subdivision.

- b. A proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO R-2 RESIDENTIAL DISTRICT (CONDITIONAL ZONING)

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FOR PROPERTY SITUATED AT WAIKAPU, MAUI,
HAWAII”.

The purpose of the proposed bill is to conditionally change the zoning of approximately 28.7 acres located at Waikapu, Wailuku, Maui (TMK No. (2) 3-5-004:025) to facilitate the development of a 108-lot residential subdivision.

2. County Communication No. 05-31, from the Planning Director, correcting errors in the Department of Planning’s transmittal letter of December 2, 2004, while noting the errors were not contained in the proposed bills.

Your Committee notes that the Maui Planning Commission held a public hearing on the application for a Community Plan Amendment and Change in Zoning on August 10, 2004.

Your Committee further notes that at its meeting of August 10, 2004, the Maui Planning Commission, after reviewing the findings presented in the documents entitled “MAUI PLANNING DEPARTMENT’S REPORT TO THE MAUI PLANNING COMMISSION AUGUST 10, 2004 MEETING” and “MAUI PLANNING DEPARTMENT’S RECOMMENDATIONS REPORT TO THE MAUI PLANNING COMMISSION AUGUST 10, 2004 MEETING”, voted to recommend approval of the proposed Community Plan Amendment and Change in Zoning.

At its meeting of January 21, 2005, the Council referred County Communication No. 04-295 to your Land Use Committee (County Communication No. 05-11).

By correspondence dated January 13, 2005 (received on January 25, 2005), Kristi C. N. Buen and Vernon Patao expressed support for the proposed bills and requested that your Committee promptly consider them.

By correspondence dated January 25, 2005, the Chair of your Committee transmitted correspondence dated January 12, 2005, from Scott Nunokawa, Manager, Waikapu 28 Investment, LLC, transmitting: (1) a copy of a “Petition for District Boundary Amendment from Agricultural to Urban” for the proposed subdivision, filed on January 5, 2004, in Docket No. A04-746 before the State

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Land Use Commission (SLUC proceeding); and (2) a copy of the "Findings of Fact, Conclusions of Law, and Decision and Order for a State Land Use District Boundary Amendment", dated December 14, 2004, in the SLUC proceeding.

By correspondence dated January 26, 2005, the Chair of your Committee transmitted correspondence dated January 6, 2005, from Gerald and Stacie Tomooka, requesting expedited review of the proposed bills.

By correspondence dated February 4, 2005, the Chair of your Committee transmitted correspondence dated February 1, 2005, from Scott Nunokawa, Manager, Waikapu 28 Investment LLC, transmitting: (1) "Applications for Community Plan Amendment and Change in Zoning, Proposed Waiolani Mauka Residential Subdivision at TMK 3-5-04:25" prepared for Waikapu 28 Investment, LLC by Munekiyo & Hiraga, Inc., dated February 2004; and (2) a "Final Environmental Assessment, Proposed Waiolani Mauka Subdivision at TMK 3-5-04:25" prepared for Waikapu 28 Investment, LLC by Munekiyo & Hiraga, Inc., dated May 2004.

By correspondence dated February 28, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel revise the proposed bills to incorporate technical corrections.

By correspondence dated March 1, 2005, the Chair of your Committee transmitted a copy of the "MAUI PLANNING DEPARTMENT'S RECOMMENDATIONS REPORT TO THE MAUI PLANNING COMMISSION AUGUST 10, 2004 MEETING", which was omitted from County Communication No. 04-295.

By correspondence dated March 1, 2005, the Chair of your Committee transmitted (1) correspondence dated August 25, 2004, from Scott Nunokawa, Waikapu 28 Investment, LLC, to Julia Tsumoto, State Department of Transportation (State DOT), regarding three possible conditions to accommodate traffic issues; and (2) correspondence dated August 26, 2004, from Rodney K. Haraga, Director, State DOT, to Scott Nunokawa, Waikapu 28 Investment, LLC, agreeing with the recommended conditions.

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By correspondence dated March 2, 2005, the Department of the Corporation Counsel transmitted the revised proposed bills incorporating your Committee's requested revisions.

At its site inspection of March 2, 2005, your Committee met at the site with the Planning Director; a Planner, Department of Planning; the Director of Public Works and Environmental Management; a Captain, Department of Police; a Police Officer, Department of Police; a Deputy Corporation Counsel; Scott Nunokawa, Manager, Waikapu 28 Investment, LLC; Haunani Lemn, Waikapu 28 Investment, LLC; Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc.; and Phillip Rowell, Traffic Engineer, Phillip Rowell & Associates.

A member of the public testified that infrastructure, open space, and greenbelts need to be considered. She observed that view planes have been lost, although she supported the inclusion of a park in the plans.

Mr. Nunokawa distributed a brief description of the project and the existing and proposed land use designations, and a preliminary subdivision map. He also displayed a posterboard map of the area and gave an overview of the request. The Planner explained the Community Plan designations of the subject parcel and neighboring parcels to place the requested land use approvals in context. The Police Captain reiterated concerns earlier expressed regarding traffic impacts caused by additional residents. He noted that a police beat has not been added in this area since 1986, and that development will increase the calls for service placed. The Director of Public Works and Environmental Management noted that a concern had been raised before the Maui Planning Commission regarding the traffic signal to be installed at the intersection of Pilikana Street and Honoapiilani Highway.

Your Committee deferred consideration of the matter pending a meeting in the Council Chamber later in the day.

At its meeting of March 2, 2005, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Housing and Human Concerns; the Director of Public Works and Environmental Management; a Captain, Department of Police; a Deputy Corporation Counsel; Scott Nunokawa,

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Manager, Waikapu 28 Investment, LLC; Haunani Lemn, Waikapu 28 Investment, LLC; and Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc.

Your Committee received public testimony from two individuals in support of the application.

Your Committee received an electronic presentation and a printout of the presentation from Mr. Nunokawa and Ms. Lemn, on behalf of the applicant. The presentation summarized the proposed request, including infrastructure improvements and traffic-calming devices to be implemented; provided regional and site location maps, aerial photos of the site, and a proposed plot map; set forth the Maui Planning Commission's recommended Change in Zoning conditions; noted the reports prepared in conjunction with the application; and highlighted the conditions imposed by the State Land Use Commission (SLUC) in reviewing the request for a District Boundary Amendment. Mr. Nunokawa and Ms. Lemn noted that, as part of the SLUC requirements, the applicant will be required to participate in the funding and construction of a traffic signal, a water storage tank, a detention basin, and the expansion of a reservoir.

The Planner provided a brief overview of the application, and provided your Committee with a preliminary circulation plan for the area. The Planning Director noted that the circulation plan demonstrates the importance of providing through roads. The two existing traffic signals are represented by concentric circles, while the two new signals being required by the State DOT are represented by single circles. The Planning Director informed your Committee that the Department had argued against installing a signal at the intersection of Honoapiilani Highway and Pilikana Street, to no avail. The Department feels strongly that alternative routes of access to the area need to be provided, and the Department of Fire and Public Safety concurs.

Your Committee discussed the affordable housing component of the Change in Zoning application. The Director of Housing and Human Concerns informed your Committee that the Department recommends that 10 percent of the lots (11 lots) be affordable for families whose gross annual income does not exceed 120 percent of the County's median annual income. A ten-year buyback provision is standard. Your Committee expressed some concerns regarding a gap in available housing for the group earning 120 percent to 140 percent of the County's annual median income.

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Mr. Nunokawa provided your Committee with a copy of the "Maui County Housing Policy" (revised April 27, 2004) to clarify comments dated April 23, 2004, from the Director of Housing and Human Concerns (Exhibit 6 to County Communication No. 04-295). Your Committee requested that the Department of Housing and Human Concerns renew its efforts to propose legislation codifying a Countywide affordable housing policy.

Mr. Nunokawa informed your Committee that the applicant proposes providing lots only, not house/lot packages. While the environmental assessment notes lots will be priced between \$140,000 to \$190,000, the requirements imposed by the SLUC are estimated to increase the lot prices by approximately \$10,000. It was further estimated that roughly 50 percent of the cost would be attributable to the lot, and the other 50 percent to the construction of the house. Mr. Nunokawa advised that in excess of 350 applicants are on the applicant's waiting list.

Your Committee discussed the reservations set forth in the subject property description. Your Committee also questioned the status of any certification required to change the use of the water from agricultural to domestic.

Your Committee further discussed conditions imposed by the SLUC in connection with the District Boundary Amendment.

Your Committee also discussed drainage concerns associated with the proposed development. Mr. Nunokawa informed your Committee that the applicant would install fencing along the boundary facing existing Waikapu residences and construct a berm to ensure that the development would not result in drainage onto existing lots. Fencing along the park site would need to be coordinated with the Department of Parks and Recreation and the owners along that boundary. Fencing would be installed along both sides of the Waihee Ditch.

Your Committee noted that the third condition imposed by the SLUC limits ohana dwellings to "no more than 54 of the Project's 108 units or 50% of the lots, which ever is less, as enforced by deed restrictions." Your Committee noted that ohana, or accessory, dwellings provide rental housing opportunities for many, and that Maui County Code (MCC) Section 19.08.020(G) permits an accessory dwelling within residential districts "where the area of the lot on which the main

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house is located is seven thousand five hundred square feet or more.” According to SLUC Finding of Fact No. 27, the lots will range in size from 7,500 square feet to approximately 12,000 square feet.

Citing an opinion dated August 1, 2002 by the Department of the Corporation Counsel, your Committee questioned whether conditions imposed by the SLUC (through a District Boundary Amendment), the Council (through a Change in Zoning), or a subdivision’s covenants, conditions and restrictions (CC&Rs) could so limit ohana dwellings in the proposed subdivision despite the County Code provision.

Your Committee discussed the provision of linear access by way of an easement along the park site, the possibility of which is being explored by the applicant.

Your Committee expressed concerns regarding heavy traffic congestion fronting Wailuku Elementary School and heading south on Honoapiilani Highway at the North Kihei Road turning lane during commuter hours. Your Committee further expressed concerns that cumulative regional impacts on roadways be addressed, rather than viewing County roadways and State highways in isolation.

Your Committee considered whether to increase to 30 percent the percentage of affordable lots to be required of the applicant. Your Committee also discussed clarifying the intent of Condition No. 5 by adding the phrase “affordable lots” prior to the first mention of “housing units”.

Your Committee questioned the need to retain Condition No. 6 of the proposed Change in Zoning bill, relating to fair share contributions toward public school facilities, when the SLUC had already imposed a like condition on the applicant, with a deadline for compliance “prior to obtaining County of Maui rezoning”.

Your Committee further considered whether to defer the matter until issues regarding through roads, certification regarding change in water use, park maintenance, and limitations on ohana dwellings are resolved.

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Your Committee recommended that the proposed Change in Zoning bill be further revised as follows:

1. Revise Condition No. 5 in Exhibit "2" to read: "That the affordable lots/housing units shall be intermixed with the market priced lots/[houses]housing units."
2. Delete Condition No. 6 in Exhibit "2".

Your Committee further recommended that the written agreement between the applicant and the State Department of Education for fair share contributions toward public school facilities, as required by SLUC Condition No. 4, be provided prior to passage of the proposed Change in Zoning bill on second and final reading.

Your Committee voted to recommend passage of the revised proposed bills on first reading, recordation of the unilateral agreement, and filing of County Communication No. 04-295.

Due to concerns raised after your Committee's meeting regarding the applicability of Chapter 2.80A, MCC, to the proposed Community Plan Amendment, the Chair of your Committee, by correspondence dated March 4, 2005, requested that the Department of the Corporation Counsel provide a written opinion to address this matter.

By correspondence dated March 7, 2005, the Council Chair transmitted correspondence dated March 2, 2005, from Kassia Percell, expressing support for the application.

By correspondence dated March 8, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel (1) revise the proposed Change in Zoning bill to incorporate revisions to the proposed conditions requested at your Committee's March 2, 2005 meeting; and (2) revise the proposed Community Plan Amendment bill to comport with the Department's interpretation of the applicability of Chapter 2.80A, MCC.

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By correspondence dated March 9, 2005, the Department of the Corporation Counsel transmitted the following revised proposed bills, incorporating your Committee's requested revisions:

1. A revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM PUBLIC/QUASI-PUBLIC TO SINGLE-FAMILY FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII".
2. A revised proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO R-2 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII".

By correspondence dated March 9, 2005, the Chair of your Committee transmitted correspondence dated March 7, 2005, from Gerald and Stacie Tomooka, requesting approval of the proposed bills.

By correspondence dated March 9, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel provide an opinion in response to the following questions raised at your Committee's March 2, 2005 meeting: (1) whether the SLUC can limit ohana dwellings in the proposed subdivision to no more than 50 percent of the lots despite the provision in Section 19.08.020(G), MCC, for an accessory dwelling; and (2) what recourse the Council has if the limitation is deemed impermissible or if the Council disagrees with the condition.

At its meeting of March 10, 2005, your Committee met with the Director of Public Works and Environmental Management; the Corporation Counsel; Scott Nunokawa, Manager, Waikapu 28 Investment, LLC; Haunani Lemn, Waikapu 28 Investment, LLC; and Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc.

There was no public testimony.

The Chair of your Committee noted that, subsequent to the March 2, 2005 Committee meeting, he was apprised that the application was deemed filed and complete on March 8, 2004 – four days after Ordinance No. 3166 became

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effective. Nonetheless, the proposed bill to amend the Community Plan cites Chapter 2.80A, MCC, as the provision by which the amendment would occur. Accordingly, the Chair of your Committee requested that the Department of the Corporation Counsel provide an opinion as to whether Chapter 2.80A or Chapter 2.80B, MCC, applies to this application.

In order to discuss the posture of the proposed Community Plan Amendment and any impact the Department's interpretation might have on the proposed bill, your Committee voted to reconsider the previous motion to pass on first reading the proposed bill to amend the Community Plan, to pass on first reading the proposed bill to conditionally change zoning, as amended, to record the unilateral agreement, and to file County Communication No. 04-295.

Your Committee proceeded to consider the revised proposed bills transmitted by the Department of the Corporation Counsel on March 9, 2005.

The Corporation Counsel advised your Committee that the proposed bill to amend the Community Plan has been further revised to delete all references to Chapter 2.80A, MCC. The revised proposed bill now references Section 8-8.6 of the Revised Charter of the County of Maui (1983), as amended (Charter), relating to the "Adoption of General Plan and Other Land Use Ordinances". He explained that, because this application was deemed filed and complete as of March 8, 2004, the issues at stake are how the grandfather provisions of Bill 84 (now Ordinance No. 3166) apply, and what law applies to this type of application.

The Corporation Counsel advised that Bill 84: (1) repealed Chapter 2.80A, MCC; (2) adopted Chapter 2.80B, MCC; and (3) incorporated a grandfather provision. The grandfather provision provides: "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."

Because this application was deemed filed and complete after the effective date of the ordinance, it does not literally fall within the grandfather provision. Accordingly, the question is whether the application is subject to the new law found in Chapter 2.80B, MCC.

The Corporation Counsel opined that Bill 84 created an inadvertent category of pending applications that do not clearly fall under either Chapter

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2.80A or 2.80B, MCC. Nonetheless, the Council can proceed to adopt community plan amendments by defaulting to the Charter. Because community plans are part of the general plan, and Section 8-8.6 of the Charter authorizes the Council to adopt revisions to the general plan by ordinances, the Council is authorized to adopt community plan amendments.

He noted that this situation leaves open the question of how to address the resulting gap. The Corporation Counsel recommended that the Council, through another agenda item, consider legislation which would evaluate how Bill 84 was intended to apply to community plan amendments and clarify the situation.

Your Committee voted to recommend that the revised proposed Community Plan Amendment bill and the revised proposed Change in Zoning bill be passed on first reading; that a unilateral agreement reflecting the applicable zoning conditions be recorded; that the subject matter regarding the applicability of Chapter 2.80A and Chapter 2.80B, MCC, to non-decennial community plan amendments be referred to the Planning Committee; and that the communications be filed.

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

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 WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM PUBLIC/QUASI-PUBLIC TO SINGLE-FAMILY FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII", 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 CHANGE ZONING FROM AGRICULTURAL DISTRICT TO R-2 RESIDENTIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII", be PASSED ON FIRST READING and be ORDERED TO PRINT;

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3. That the County Clerk RECORD the “Unilateral Agreement and Declaration for Conditional Zoning”;
4. That the matter regarding the applicability of Chapter 2.80A and Chapter 2.80B, MCC, to non-decennial community plan amendments be REFERRED to the Planning Committee;
5. [That a written agreement between the State Department of Education and Waikapu 28 Investment, LLC relative to any fair share contributions toward public school facilities be RECEIVED prior to the passage of the bills on second and final reading;
- 6.] That County Communication No. 04-295 be FILED; and
- [7.]6. That County Communication No. 05-31 be FILED.

Adoption of this report is respectfully requested.

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ROBERT CARROLL **Chair**

DAIN P. KANE **Member**

JOSEPH PONTANILLA **Vice-Chair**

DANNY A. MATEO **Member**

MICHELLE ANDERSON **Member**

MICHAEL J. MOLINA **Member**

G. RIKI HOKAMA **Member**

CHARMAINE TAVARES **Member**

JO ANNE JOHNSON **Member**