

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

June 3, 2005

Committee
Report No.

_____ 05-70 _____

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

Chair and Members:

Your Land Use Committee, having met on May 9, 2005 (site inspection and meeting), makes reference to County Communication No. 05-110, from the Planning Director, transmitting the following:

1. A proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO OPEN SPACE, OPEN SPACE TO RURAL, AND OPEN SPACE TO PUBLIC/QUASI-PUBLIC FOR PROPERTY SITUATED AT SPRECKELSVILLE, MAUI, HAWAII".

The purpose of the proposed bill is to amend the Wailuku-Kahului Community Plan and Land Use Map for approximately 14.859 acres from Open Space to Rural; for approximately 3.000 acres from Single-Family to Open Space; and for approximately 1.163 acres from Open Space to Public/Quasi-Public, to allow the applicant, Henry Spencer, on behalf of Old Stable LLC (Mr. Spencer), to develop the E Paepae Ka Puko`a project located on Spreckelsville Beach Road, also known as Stable Road (Stable Road), Spreckelsville, Maui, Hawaii, and identified as TMK: (2) 3-8-001: por. 003, (2) 3-8-002:009 and (2) 3-8-002:010. The project will include a 16-unit rural subdivision, an open space conservation easement, and a donation of land to the County or State for the future expansion of the Kaunoa Senior Center (Kaunoa).

2. A proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 RESIDENTIAL DISTRICT TO OS-2 OPEN SPACE DISTRICT, FROM R-3 RESIDENTIAL DISTRICT TO RU-0.5 RURAL DISTRICT, AND FROM R-3 RESIDENTIAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT SPRECKELSVILLE, MAUI, HAWAII".

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The purpose of the proposed bill is to conditionally change the zoning for approximately 14.859 acres from R-3 Residential District to RU-0.5 Rural District; for approximately 24.501 acres from R-3 Residential District to OS-2 Open Space District; and for approximately 1.163 acres from R-3 Residential District to P-1 Public/Quasi-Public District to allow for the development of the E Paepae Ka Puko`a project.

Your Committee notes that the Maui Planning Commission held a public hearing on the application for a Community Plan Amendment and Conditional Change in Zoning on February 8, 2005.

Your Committee further notes that at its meeting of February 8, 2005, the Maui Planning Commission, after reviewing the findings presented in the documents entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION February 8, 2005 MEETING" and "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION February 8, 2005 MEETING", voted to recommend approval of the proposed Community Plan Amendment and Change in Zoning with 11 conditions.

By correspondence dated March 15, 2005, the Chair of your Committee requested that the Planning Director transmit a copy of the minutes of the February 8, 2005 Maui Planning Commission meeting and a copy of the Final Environmental Assessment.

By correspondence dated March 21, 2005, the Chair of your Committee requested that Mr. Spencer provide (1) a copy of a map, site plan, or visual aid to place the lots referenced in the Conditional Change in Zoning bill in context, and (2) a copy of the Petition for Intervention in the Special Management Area Permit Application (SM1 2004/0021), along with a summary of the status of the petition.

By correspondence dated March 28, 2005, the Chair of your Committee requested that the Director of Housing and Human Concerns provide the appraised value of the 1.16 acres proposed for the expansion of Kaunoa, as well as the value of the in-lieu monetary contribution that would otherwise be required.

By correspondence dated March 28, 2005, the Chair of your Committee requested that the Director of Parks and Recreation provide updated information concerning the Department's position on how Mr. Spencer should fulfill the parks and playgrounds requirement under Section 18.16.320 of the Maui County Code (MCC).

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

By correspondence dated March 28, 2005, Thomas D. Welch, Jr., Esq., attorney for Mr. Spencer, provided a summary of the status of the Petition for Intervention (Petition) and a copy of the Petition.

By correspondence dated March 29, 2005, the Chair of your Committee transmitted to Isaac D. Hall, Esq., the attorney for Intervenors Annie and Willie Nelson, John and Louise Severson, and Jenna deRosnay in the Special Management Area Permit Application (SMA Application), a copy of Mr. Welch's March 28, 2005 summary. The Chair of your Committee requested that Mr. Hall provide any written comments he might have in response to the summary.

By correspondence dated March 30, 2005, Mr. Spencer provided (1) a subdivision map highlighting the lots referenced in the proposed Change in Zoning conditions; (2) a map illustrating the proposed changes to the land use designations; (3) a map illustrating the existing beach access, as well as the proposed Laulea beach access which is the subject of the Petition; and (4) a copy of correspondence dated January 21, 2005, from the Director of Parks and Recreation to the Development Services Administration, Department of Public Works and Environmental Management, relating to a parks and playgrounds assessment fee of \$81,270 for the proposed subdivision.

By correspondence dated March 31, 2005, the Planning Director transmitted a copy of the minutes of the February 8, 2005 Maui Planning Commission meeting.

By correspondence dated April 4, 2005, the Department of the Corporation Counsel provided the following revised proposed bills incorporating nonsubstantive revisions entitled:

1. "A BILL FOR AN ORDINANCE TO AMEND THE WAILUKU-KAHULUI COMMUNITY PLAN AND LAND USE MAP FROM SINGLE-FAMILY TO OPEN SPACE, OPEN SPACE TO RURAL, AND OPEN SPACE TO PUBLIC/QUASI-PUBLIC FOR PROPERTY (E PAEPAE KA PUKO'A RURAL SUBDIVISION) SITUATED AT SPRECKELSVILLE, MAUI, HAWAII"; and

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2. “A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM R-3 RESIDENTIAL DISTRICT TO OS-2 OPEN SPACE DISTRICT, FROM R-3 RESIDENTIAL DISTRICT TO RU-0.5 RURAL DISTRICT, AND FROM R-3 RESIDENTIAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT (CONDITIONAL ZONING) FOR PROPERTY (E PAEPAE KA PUKO`A RURAL SUBDIVISION) SITUATED AT SPRECKELSVILLE, MAUI, HAWAII”.

By correspondence dated April 5, 2005, the Chair of your Committee requested that the Director of Housing and Human Concerns confirm the ownership of the parcel upon which Kaunoa is located and the terms under which Kaunoa occupies the property. The Chair of your Committee also requested a response as to whether it would be more advantageous for the Department to have the proposed 1.16-acre parcel for the expansion of Kaunoa dedicated to the County or to the State if the Change in Zoning request was approved.

By correspondence dated April 7, 2005, the Chair of your Committee transmitted a copy of correspondence dated April 4, 2005, from the Planning Director, noting the transmittal of a copy of the Final Environmental Assessment.

By correspondence dated April 13, 2005, the Director of Housing and Human Concerns responded to your Committee’s request dated March 28, 2005, noting that the estimated value of the 1.16-acre parcel is \$494,000 and the in-lieu fee for 10 percent of 16 units would have been \$60,000.

By correspondence dated April 14, 2005, the Director of Housing and Human Concerns responded to the request dated April 5, 2005, stating that the property on which Kaunoa is located is under the control and management of the County, citing to Executive Order No. 02715, which sets aside the site for the purpose of providing services to the elderly. The Director also recommended that the parcel be donated to the County.

By correspondence dated April 25, 2005, the Chair of your Committee requested that Mr. Spencer provide information relating to the stewardship of the property being proposed as an open space conservation easement.

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By correspondence dated April 26, 2005, the Chair of your Committee requested that the Director of Parks and Recreation provide a response to your Committee's March 28, 2005 request.

By correspondence dated May 2, 2005, the Director of Parks and Recreation responded that the Department agreed to accept the proposed park site (Lot 19) to satisfy the parks and playgrounds requirement for the project, provided that Mr. Spencer improves the site with lot grading, grass planting, and automatic irrigation.

By correspondence dated May 2, 2005, Mr. Spencer provided information relating to stewardship of the proposed conservation easement, stating that the Maui Coastal Land Trust would be the entity assuming stewardship of the easement, that the homeowners association would be responsible for funding the execution of the terms of the easement, and that the County would not have any oversight responsibilities for the easement.

At its site inspection, your Committee met at the site (the intersection of Stable Road and Hana Highway) with the Planning Director; a Planner, Department of Planning; the Director of Housing and Human Concerns; the Deputy Director of Public Works and Environmental Management; the Planning and Development Division Chief, Department of Parks and Recreation; an Acting Captain, Department of Police; a Lieutenant, Department of Fire and Public Safety; a Deputy Corporation Counsel; a District Engineer, Maui District, Highways Division, State Department of Transportation; Henry Spencer, Old Stable LLC; Daren Suzuki, Planner, Munekiyo & Hiraga, Inc.; Thomas D. Welch, Jr., Esq., attorney for Mr. Spencer; Isaac D. Hall, Esq., attorney for the Intervenor in the SMA Application; and Annie Nelson, an Intervenor in the SMA Application. Your Committee also viewed the site from two additional locations – from one of the oceanfront parcels that would be dedicated as an open space conservation easement, and from the portion of the Kaunoa Senior Center bordering the proposed 1.16-acre property to be donated for Kaunoa's expansion.

Mr. Hall testified that a previously proposed access from Laulea Place had been the impetus for the Petition to Intervene in the SMA Application. The Maui Planning Commission removed the disputed access from the recommended conditions. Mr. Hall summarized the status of discussions with Mr. Spencer and a subsequent agreement, which includes construction of a wall alongside the boundary of the proposed subdivision, to provide a buffer between the existing homes and the rural lots that would be created through the project. Ms. Nelson testified that the open space conservation

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easement, and in particular, the shoreline component of the easement, would provide a great benefit to the people of Maui.

Mr. Spencer provided a diagram and written directions describing vantage points for the site inspection. He also displayed a poster board diagram of the area and the proposed land use designations. Mr. Suzuki gave a brief overview of the project, including the land use changes being requested. The Planner highlighted some of the conditions recommended by the Maui Planning Commission.

Your Committee questioned the purpose of the wall to be constructed as a result of Mr. Spencer's agreement with the Intervenor. Ms. Nelson informed your Committee that the wall was intended to address privacy and security issues. Your Committee also questioned whether the net result would be a gated community, and was informed that no gate would be erected across Laulea Place. Instead, a six-foot wall would border the proposed development along Laulea Place.

Your Committee discussed erosion rates for the shoreline property; the lot configuration of the proposed subdivision; access to the proposed subdivision; existing recreational uses for the shoreline property; vehicular access to the shoreline; the condition in which the open space easement would be maintained; and the approximate configuration of the 1.16-acre property. Your Committee further questioned when the R-3 Residential District zoning had been established for the subject property.

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

At its meeting, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Housing and Human Concerns; the Deputy Director of Public Works and Environmental Management; the Planning and Development Division Chief, Department of Parks and Recreation; an Acting Captain, Department of Police; a Lieutenant, Department of Fire and Public Safety; a Deputy Corporation Counsel; a District Engineer, Maui District, Highways Division, State Department of Transportation (DOT); Dale Bonar, Executive Director, Maui Coastal Land Trust (MCLT); Henry Spencer, Old Stable LLC; Daren Suzuki, Planner, Munekiyo & Hiraga, Inc.; Thomas D. Welch, Jr., Esq., attorney for Mr. Spencer; Isaac D. Hall, Esq., attorney for the Intervenor in the SMA Application; and Annie Nelson, an Intervenor in the SMA Application.

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Your Committee received a brief presentation by Mr. Suzuki, who displayed a poster board of the site. Mr. Suzuki outlined the project, the layout of the subject parcels, and the proposed changes to land use designations. He informed your Committee that the Maui Planning Commission had deferred consideration of the SMA Application pending a decision by the Council on the Community Plan Amendment and Conditional Change in Zoning.

The Planner provided a brief procedural background on the application and read through the eleven conditions recommended by the Maui Planning Commission. She noted that the Maui Planning Commission deleted from its recommendation one of the conditions recommended by the Department of Planning relating to a public beach access from Laulea Place. She informed your Committee that the Maui Planning Commission felt that adequate public access had been provided to the shoreline from Stable Road through the proposed conservation easement, and through a public beach access next to the Sugar Cove Condominium. In addition, she noted that an agricultural subdivision across Kaunoa has a private easement to the shoreline.

The Planner also responded to a question posed at the site inspection, noting that the zoning map designating the property as R-3 Residential District had been adopted in 1970.

Your Committee received public testimony from one individual who resides in the vicinity of the subject property and who supports the proposed donation of land for the Kaunoa expansion.

Your Committee discussed the 1.925-acre neighborhood park proposed in Condition No. 4. The Planner informed your Committee that the park would be for the residents of the subdivision and would not be dedicated to the County. The Planning and Development Division Chief stated that the proposed park satisfies the parks and playgrounds requirement for the project.

Your Committee discussed plans for Lot 20, the proposed open space area also described in Condition No. 4. Your Committee questioned the purpose of designating the lot as open space if it would be fenced off on all sides. Mr. Spencer informed your Committee that the area is sensitive and contains some wetlands.

Mr. Spencer indicated that the utility easements along Stable Road would continue, without any change or cessation of services.

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The Lieutenant noted that construction of the proposed wall along Laulea Place would hinder emergency access and the ability of fire trucks to make their turns. However, he noted that the Department of Fire and Public Safety could work with Mr. Spencer to try to ameliorate negative impacts. Mr. Spencer informed your Committee that he would work with the Department, and if necessary the wall could be located within the boundary of the subdivision lots.

Mr. Suzuki advised your Committee of a wetland survey and mitigation plan prepared by Vuich Environmental Consultants, Inc., noting that three areas on the subject property are considered to have wetland characteristics. Although it has not officially been determined whether those areas are jurisdictional wetlands, they will be treated as such. The plan is to enhance the wetland area by 20,000 square feet, for a total of 30,000 square feet of wetland area.

Your Committee was informed that SMA approval still needs to be obtained. At that time, site-specific conditions, including those conditions recommended by the State Historic Preservation Division, Department of Land and Natural Resources, will be considered.

The Planner informed your Committee that shoreline setbacks were not calculated because the project is more than 150 feet away from the shoreline.

The District Engineer apprised your Committee of improvements taking place in the project area, including a left-turn lane into Stable Road, the resurfacing of Hana Highway from Haleakala Highway to Hookipa Park, and a pocket lane that may tie into the lane turning into Kaunoa. The District Engineer indicated that Mr. Spencer had been in discussions with the State DOT for the last 1-1/2 years. Improvements in the Stable Road area are estimated for completion in three months.

The Acting Captain noted that the Department of Police had contacted the State DOT in October 2004, and that most of the Department's concerns had been satisfied. The community policing officer did a survey and did not find a significant impact or a change in level of service as a result of the project.

The Deputy Director of Public Works and Environmental Management advised that, due to the community's desire to preclude access to the subdivision from Laulea Place, Mr. Spencer will need to go through the Board of Variances and Appeals to obtain

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a waiver from the requirement for two vehicular accesses. Mr. Suzuki provided the estimated widths for the right-of-way for Laulea Place, which vary from 24 to 52 feet.

Your Committee expressed some concern over the Maui Planning Commission's recommendation that a condition relating to shoreline access from Laulea Place be removed. Your Committee notes the Planner's comments relating to existing alternative shoreline accesses in the area and discussed the proximity of those accesses. Mr. Spencer advised your Committee that access via Laulea Place would have been to the exact same spot as the access already existing via Stable Road.

Mr. Bonar informed your Committee that the agreement being considered between Mr. Spencer and the MCLT for the open space conservation easement is similar to the agreement that MCLT provided for the Waihee Preserve. The agreement will essentially ensure that the approximately 20 acres that Mr. Spencer is dedicating to open space will remain as open space and will not be developed. Protection of dunes is a specific duty under the easement. The shoreline access road that currently exists can be moved to accommodate the normal movement of the dunes so that the dunes are not impacted. Access and parking would not be increased over what is currently provided. Rather, the easement would be kept rustic.

Mr. Bonar further advised that permitted and unpermitted uses are specified under the easement. Unpermitted uses would include camping, erecting structures, or planting non-native vegetation on the easement. Mr. Bonar further informed your Committee that the MCLT board has already approved the easement in principle, and that the agreement is in the process of being finalized.

Your Committee requested that Mr. Spencer provide a copy of the easement agreement with MCLT. Your Committee was informed that MCLT would hold the conservation easement. The owner of the land burdened by the easement is currently Mr. Spencer, and title would later be transferred to the homeowners association.

Mr. Hall advised your Committee that the wall to be constructed along Laulea Place (or alternatively, if the County indicates that Laulea Place is too narrow, just inside the subdivision lots along Laulea Place) would provide a buffer between the older residences and the new development.

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

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reading, that a unilateral agreement reflecting the applicable zoning conditions be recorded, and that the communication be filed.

Your Committee expressed particular appreciation for the dedications of open space and land to expand Kaunoa.

Your Committee is in receipt of an agreement entitled “Unilateral Agreement and Declaration for Conditional Zoning” executed by Mr. Spencer.

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 SINGLE-FAMILY TO OPEN SPACE, OPEN SPACE TO RURAL, AND OPEN SPACE TO PUBLIC/QUASI-PUBLIC FOR PROPERTY (E PAEPAE KA PUKO`A RURAL SUBDIVISION) SITUATED AT SPRECKELSVILLE, 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 R-3 RESIDENTIAL DISTRICT TO OS-2 OPEN SPACE DISTRICT, FROM R-3 RESIDENTIAL DISTRICT TO RU-0.5 RURAL DISTRICT, AND FROM R-3 RESIDENTIAL DISTRICT TO P-1 PUBLIC/QUASI-PUBLIC DISTRICT (CONDITIONAL ZONING) FOR PROPERTY (E PAEPAE KA PUKO`A RURAL SUBDIVISION) SITUATED AT SPRECKELSVILLE, MAUI, HAWAII”, be PASSED ON FIRST READING and be ORDERED TO PRINT;
3. That the County Clerk RECORD the “Unilateral Agreement and Declaration for Conditional Zoning”; and
4. That County Communication No. 05-110 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**