

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

September 2, 2005

Committee
Report No.

05-129

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 17, 2005, makes reference to County Communication No. 05-111, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII". The purpose of the proposed bill is to enact a Change in Zoning, on behalf of Consolidated Baseyards LLC (the applicant), from Agricultural District to M-1 Light Industrial District in order to develop a light industrial subdivision of up to 39 lots and related improvements on approximately 23.164 acres at 345 East Waiko Road, Waikapu, Maui (TMK: (2) 3-8-07:089, (2) 3-8-07:143, and (2) 3-8-07:144).

Your Committee notes that the Maui Planning Commission held a public hearing on the application on December 14, 2004.

Your Committee further notes that the Maui Planning Commission, after reviewing the findings presented in the documents respectively entitled "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION December 14, 2004 MEETING", "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION December 14, 2004 MEETING", and "MAUI PLANNING DEPARTMENT'S AMENDED RECOMMENDATION TO THE MAUI PLANNING COMMISSION December 14, 2004 MEETING", voted to recommend approval of the application, subject to five zoning conditions.

By correspondence dated May 31, 2005, Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc., transmitted copies of (1) the State Land Use Commission's (State LUC) Findings of Fact, Conclusions of Law, and Decision and Order, adopted on May 24, 2005; and (2) correspondence dated December 15, 2004, from David Ward, Consolidated Baseyards LLC to Harold Yee, Chief, State Department of Health, Wastewater Branch, regarding project-related wastewater and safe drinking water

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concerns. Your Committee notes that the State LUC imposed a condition, as part of its Decision and Order, requiring that an affordable housing study be conducted.

By correspondence dated June 6, 2005, the Chair of your Committee noted the receipt of a copy of the Final Environmental Assessment prepared by Munekiyo & Hiraga, Inc., dated September 2004.

Your Committee is in receipt of a copy of correspondence dated July 6, 2005, from Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc., to Anthony J. H. Ching, Executive Officer, State LUC, submitting an affordable housing study for the project dated June 28, 2005, prepared by ACM Consultants, Inc. (the Affordable Housing Study). Your Committee notes that the conclusion drawn in the Affordable Housing Study is that "the developer should provide a contribution that would account for a total of four (4) affordable housing units."

By correspondence dated July 25, 2005, Anthony J. H. Ching, Executive Officer, State LUC, provided his interpretation of the Commission's requirements with respect to the timing and circumstances surrounding the submittal of an affordable housing study for the project.

By correspondence dated July 27, 2005, Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc., transmitted a copy of correspondence dated July 25, 2005, from Anthony J. H. Ching, Executive Officer, State LUC, along with two maps of the project site.

By correspondence dated August 8, 2005, the Chair of your Committee requested that the Department of the Corporation Counsel transmit a revised proposed bill incorporating various nonsubstantive and technical revisions.

By correspondence dated August 11, 2005, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII". The revised proposed bill incorporates the requested revisions.

Your Committee is in receipt of a copy of correspondence dated August 15, 2005, from the Director of Housing and Human Concerns to Karlynn Kawahara, Planner,

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Munekiyo & Hiraga, Inc., stating that the Department has reviewed the Affordable Housing Study and finds it acceptable; that Consolidated Baseyards LLC should provide four affordable housing units in accordance with the Study's conclusions; and that the Department understands that Consolidated Baseyards LLC proposes an in-lieu monetary contribution of \$35,000 per unit, for a total contribution of \$140,000.

By correspondence dated August 17, 2005, Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc., proposed three additional conditions of zoning involving (1) an in-lieu cash contribution for affordable housing purposes; (2) an agreement to construct or bond certain road improvements; and (3) parking restrictions. She also clarified the applicant's agreement to contribute up to 50 percent of the cost of improvements for the signalization of the Honoapiilani Highway and East Waiko Road intersection.

By correspondence dated August 17, 2005, Dean Frampton, Frampton & Ward, LLC, transmitted copies of the following: (1) correspondence dated August 12, 2005, from the Planning Director to David Ward, Consolidated Baseyards LLC, noting that the Department of Planning will defer to the Department of Housing and Human Concerns and the Maui County Council on the conclusions in the Affordable Housing Study and its applicability to the application; (2) correspondence dated August 11, 2005, from Dean Frampton, Frampton & Ward, LLC, to Cary Yamashita, Chief, Engineering Division, Department of Public Works and Environmental Management, relating to roadway frontage improvements; and (3) correspondence dated July 8, 2004, from the former Director of Public Works and Environmental Management to the Chief of Police, clarifying the ownership status of East Waiko Road.

At its meeting, your Committee met with the Planning Director; a Planner, Department of Planning; the Director of Public Works and Environmental Management; the Director of Housing and Human Concerns; the Deputy Fire Chief; a Police Lieutenant, Department of Police; and three Deputy Corporation Counsel.

Your Committee notes that the following representatives were also present on behalf of the applicant: Roderick Fong, Consolidated Baseyards LLC; David Ward, Frampton & Ward, LLC, applicant's project manager; Dean Frampton, Frampton & Ward, LLC, applicant's project manager; Michael Munekiyo, Munekiyo & Hiraga, Inc., applicant's planning consultant; Karlynn Kawahara, Planner, Munekiyo & Hiraga, Inc., applicant's planning consultant; Stacy Otomo, Otomo Engineering, Inc., applicant's civil engineer; Ivan Nakatsuka, Austin Tsutsumi & Associates, Inc., applicant's civil engineer; Neal Kasamoto, Austin Tsutsumi & Associates, Inc., applicant's traffic engineer;

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Tom Nance, Tom Nance Water Resource Engineering, applicant's water consultant; Glenn Kunihiha, ACM Consultants, Inc., applicant's affordable housing study consultant; Bryan Maxwell, Maxwell Design Group, applicant's landscape architect; and Blaine Kobayashi, Esq., Carlsmith Ball LLP, applicant's attorney.

Ms. Kawahara provided your Committee with a computer-generated slide show, as well as a printout of the presentation. The presentation included a description of the project site, surrounding area and uses, and a conceptual subdivision layout; a summary of the current and requested land use designations; a chronology of the application; highlights relating to water, wastewater, drainage, traffic, road improvements, the affordable housing study, and a landscape buffer; and an overview of the conditions recommended by the Maui Planning Commission and the conditions proposed by the applicant.

The Planner presented a videotape of the project site and surrounding area. He explained that the project site was granted approval back in the early to mid-1990s as part of an expansion to the existing construction baseyard. The intent of the original applicant was to provide industrial relief to service industries or companies in need of storage that were being displaced. The Maui Planning Commission recommended through the proposed conditions that a limitation be placed on retail activities at the site to ensure its continued availability for industrial uses.

Your Committee received public testimony from three individuals in support of the project. One of the testifiers, who works in commercial real estate, noted that there is no fee simple vacant M-1 Light Industrial District land available for sale, and also noted a lack of warehouse and yard space available for lease. Another testifier, who is currently a tenant at the project site, also spoke of the need for the space. The third testifier further noted traffic concerns, stating a four-lane road is needed.

The Director of Housing and Human Concerns explained that the suggested \$35,000 per unit for affordable housing purposes represents a subsidy, roughly calculated as the difference between the average cost of a house and what a household earning 100 percent of the median income could afford. The Director noted that the funds could be directed toward a nonprofit entity in the process of building affordable housing projects.

Your Committee discussed the nature and amount of the proposed affordable housing contribution. Your Committee considered options including actual housing, as

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opposed to funding; funding sufficient to cover the cost of four affordable housing units; alternative numbers to be used in calculating an appropriate subsidy; construction of an affordable four-unit apartment house at the site; a fair share contribution based on the total useable square footage of the development; and purchasing four units at the Waikapu Affordable Housing Subdivision being constructed by Spencer Homes, Inc. to fulfill the requirement. Your Committee also noted that the State LUC has only recently begun tying an affordable housing component to commercial development requests based on the need for associated employee housing.

The Deputy Fire Chief commented that the Department will need to ensure that sufficient roadway access is provided. He also noted that on-street parking, particularly for containers or extra wide equipment, should be minimized. He noted that the proposed 350,000-gallon water tank would normally be sufficient for fire protection purposes, but the Department reserves the right to further evaluate fire protection needs, and other criteria in connection with the subdivision approval process. The Deputy Fire Chief informed your Committee that the response time from the Dairy Road fire station to the site is approximately 4-1/2 minutes. Further, whether fire sprinklers will be required at a site depends upon the type of building, square footage, and use.

The Police Lieutenant informed your Committee that the Department opposes the project due to traffic safety issues and an inadequate work force to respond to increased calls. The Lieutenant provided your Committee with statistics for the Wailuku District beat, as well as for East Waiko Road only. He noted that the increased workload would include enforcement of parking violations, responding to false alarms, noise reports based on hours of industrial operations, and other calls for service. Your Committee discussed the Department's manpower shortage, related overtime demands placed on the officers, and the disproportionate increase in population as compared to the increase in beats.

The Director of Public Works and Environmental Management informed your Committee that the Department intends to pursue a Federal-aid project for improvements to East Waiko Road. The Department prefers requiring the applicant to bond, rather than construct, roadway improvements. In this manner, the applicant would pay its pro rata share of costs when the Department is ready to make the improvements rather than risk having to undo improvements that might then be in conflict. The Director estimated the roadway improvements would occur within 5 to 10 years.

The Director further noted that the Department had received complaints regarding trucks crossing the bridge, and those complaints had been referred to the Department of

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Police for enforcement. Your Committee asked the Director to confirm whether there are any outstanding conditions to the Special Use Permit or Conditional Permit that still need to be fulfilled by the applicant.

Mr. Ward informed your Committee that the applicant is considering installing lighting at the site to mitigate some concerns expressed by the Department of Police. In addition, roadways would be constructed to meet County standards. He also noted that the change in use may encourage a more positive area, and that the anticipated tenants would not typically be 24-hour shops.

Mr. Ward indicated that the applicant agrees with the results of the Affordable Housing Study. The applicant would support directing an in-lieu cash contribution to the First-Time Home Buyers Fund, thereby leveraging the contribution.

Your Committee discussed the possibility of requiring that the affordable housing units be constructed at the project site. Mr. Ward informed your Committee that community members had expressed concerns over having residential units in the area, due in part to neighboring agricultural uses. The Planning Director advised that the Department recommended that the project be restricted to light industrial uses due to the lack of such inventory. He also cited concerns over placing residential units in an industrial area.

The Planning Director noted that industrially zoned land developed for commercial use renders it no longer compatible with, or financially viable for, industrial purposes. Your Committee observed that the proposed conditions permit certain commercial uses. The Planning Director advised that the applicant had requested flexibility to allow for related office use.

Your Committee recommended that a condition be added that requires the development to use shielded outdoor lighting to prevent light trespass issues. Your Committee also recommended that a condition permitting up to two eating establishments at the project site be added to minimize employee traffic.

Your Committee discussed the handling of commercial refuse and potentially hazardous materials. Mr. Ward noted that a Pollution Prevention Plan would be implemented to address potential contaminants. The Pollution Prevention Plan would be incorporated into the covenants, conditions, and restrictions and would run with the land.

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He also noted that mitigative measures would be taken to ensure Waikapu Stream is not negatively impacted.

Your Committee recommended that a condition be added to require that baseline studies on air quality and noise levels be conducted at various stages of the build out.

Your Committee considered various alternatives for the affordable housing condition, including requiring the applicant to provide four housing units in the 100 percent median income range and further requiring that an agreement for such housing be presented to the Council for approval prior to final subdivision approval. Your Committee questioned its authority to condition the Change in Zoning on future Council approval. A Deputy Corporation Counsel informed your Committee that there have been other instances where the Council has approved conditions that return an issue to the Council, and that this requirement would be permissible. Your Committee requested that the Department of the Corporation Counsel provide examples of such instances.

Your Committee clarified that the condition would require the applicant to provide for the units through whatever means was agreed upon, whether it be funding, housing, or units purchased from the Waikapu Affordable Housing Subdivision.

Your Committee recommended that the portion of the condition requiring Council approval of the affordable housing agreement be replaced with a requirement that the applicant complete an affordable housing agreement prior to first reading.

Your Committee further recommended that the other two conditions proposed by the applicant's planner, Karlynn Kawahara, by correspondence dated August 17, 2005, be incorporated into the proposed bill. Those conditions relate to (1) the construction or bonding of specified road improvements; and (2) parking restrictions. Your Committee noted that references to "Waiko Road" should be changed to "East Waiko Road", and that references to "the applicant" should be changed to "Consolidated Baseyards LLC".

Your Committee further recommended that a condition be incorporated requiring all structures within the project to be equipped with fire sprinklers.

Your Committee recommended that the revised proposed Change in Zoning bill be further revised to incorporate the various changes to the conditions of zoning.

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Your Committee voted to recommend passage of the further revised proposed Change in Zoning bill, recordation of a unilateral agreement reflecting the applicable zoning conditions, and filing of the communication.

Your Committee is in receipt of a further revised proposed Change in Zoning bill from the Department of the Corporation Counsel incorporating your Committee's revisions.

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

Your Committee is further in receipt of a copy of a Deed from Dean Frampton, Frampton & Ward, LLC, for the subject property, consisting of 23.164 acres and formerly known as TMK: (2) 3-8-07:089, identifying Consolidated Baseyards LLC as the Grantee. The Deed was recorded with the Bureau of Conveyances as Document No. 2000-073632 on May 26, 2000.

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 CHANGE ZONING FROM AGRICULTURAL DISTRICT TO M-1 LIGHT INDUSTRIAL DISTRICT (CONDITIONAL ZONING) FOR PROPERTY SITUATED AT WAIKAPU, MAUI, HAWAII", be **PASSED ON FIRST READING** and be **ORDERED TO PRINT**;
2. That the County Clerk **RECORD** the "Unilateral Agreement and Declaration for Conditional Zoning"; and
3. That County Communication No. 05-111 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**