

COUNCIL OF THE COUNTY OF MAUI

# PARKS AND RECREATION COMMITTEE

August 3, 2001

**Committee**  
**Report No.**

01-132

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

Chair and Members:

Your Parks and Recreation Committee, having met on May 16, 2001, May 31, 2001, and July 18, 2001, makes reference to County Communication No. 97-328, from Councilmember Wayne K. Nishiki, regarding the effectiveness of Section 18.16.320 of the Maui County Code, relating to park dedications.

Your Committee notes that County Communication No. 97-328 was referred to the Council's Parks and Recreation Committee (1997-1998 Council term) at the Council meeting of October 17, 1997.

At its meeting of December 2, 1998, the Parks and Recreation Committee met to discuss the disposition of all items on its agenda and recommended that County Communication No. 97-328 be referred to the Council Chair for the term beginning January 2, 1999.

At its meeting of December 18, 1998, the Council referred County Communication No. 97-328 to the Council Chair for the term beginning January 2, 1999 (Committee Report No. 98-236).

At its meeting of January 11, 1999, the Council referred County Communication No. 97-328 to the former Council's Human Services and Parks Committee.

At its meeting of November 15, 2000, the Human Services and Parks Committee recommended that County Communication No. 97-328 be referred to the Council Chair for the term beginning January 2, 2001, for a recommendation as to referral or other disposition.

At its meeting of January 12, 2001, the Council referred County Communication No. 97-328 to your Parks and Recreation Committee (County Communication No. 01-20).

COUNCIL OF THE COUNTY OF MAUI

# PARKS AND RECREATION COMMITTEE

August 3, 2001  
Page 2

Committee  
Report No. 01-132

Your Committee notes that it previously reported on this matter in Committee Report No. 01-43, which recommended that a bill entitled "A BILL FOR AN ORDINANCE TO AMEND SUBSECTIONS B AND C OF SECTION 18.16.320, MAUI COUNTY CODE, RELATING TO THE AUTHORITY OF THE DIRECTOR OF PARKS AND RECREATION" pass first reading and be ordered to print. The purpose of the proposed bill is to grant the Director of Parks and Recreation the authority to determine how a subdivider is to fulfill the park dedication requirement. At its meeting of March 16, 2001, the Council adopted Committee Report No. 01-43, as amended (Bill No. 34).

By memorandum dated March 20, 2001, the Council Chair transmitted copies of letters dated March 15, 2001, from Charlie Jencks of Wailea 670 Associates, expressing concerns relating to Bill No. 34.

By memorandum dated March 22, 2001, the Council Chair transmitted a copy of a letter dated March 20, 2001, from Kent R. Smith of Smith Development, expressing concerns relating to Bill No. 34.

Your Committee further notes that Bill No. 34 (2001), passed second and final reading on April 6, 2001 (Ordinance No. 2956).

By memorandum dated April 17, 2001, your Committee requested that the Corporation Counsel provide a written opinion on the legal implications involved with a proposed increase in percentage rate, from 45 to 100 percent, used in the formula to calculate how cash payments are determined. Your Committee also requested other pertinent information relating to the proposed increase in the percentage rate.

By memorandum dated May 9, 2001, your Committee Chair transmitted a draft bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 18.16.320 OF THE MAUI COUNTY CODE, RELATING TO CASH PAYMENTS IN LIEU OF PARK DEDICATIONS". The purpose of the draft bill is to revise the formula for determining the amount of money required in lieu of providing park lands. The draft bill increases the percentage rate used in the formula, from 45 to 100 percent, and amends language requiring the percentage rate to be multiplied by the assessed value of the subdivided lands.

COUNCIL OF THE COUNTY OF MAUI

# PARKS AND RECREATION COMMITTEE

August 3, 2001  
Page 3

Committee  
Report No. 01-132

At its meeting of May 16, 2001, your Committee met with the Director of Parks and Recreation, the Director of Public Works and Waste Management, and a Deputy Corporation Counsel.

The Deputy Corporation Counsel provided a comparison of park dedication requirements for jurisdictions within the State of Hawaii. He indicated that the City and County of Honolulu requires the dedication of 50 square feet per dwelling unit for subdivisions of four lots or less and 350 square feet per unit for subdivisions of nine lots or more. The County of Hawaii requires 458 square feet per unit for multi-family units and 763 square feet per unit for single family units. The County of Kauai requires the dedication of 162 square feet per unit for multi-family units and 270 square feet per unit for single family units. The County of Maui falls in the mid-range, requiring 500 square feet per lot or unit, in excess of three units.

The Deputy Corporation Counsel reported that all counties within the State, other than the County of Maui, provide for cash payments in-lieu of the dedication of land based on the fair market value of the land which would have been dedicated. All other counties also provide for an appraisal process in the event the applicant and the county disagree on the fair market value of the land.

The Deputy Corporation Counsel distributed copies of Section 46-6 of the Hawaii Revised Statutes (HRS). He pointed out that provisions within Section 46-6 allow flexibility to each county to formulate its own method of determining the amount of land or cash required to fulfill the park dedication requirement.

The Director of Parks and Recreation indicated that because the existing provision grants a 55 percent discount for cash payments, developers often choose to pay cash rather than dedicate land.

The Director then reiterated concerns expressed by your Committee relating to the need for more park land, especially in areas experiencing dramatic growth, such as South Maui.

COUNCIL OF THE COUNTY OF MAUI

# PARKS AND RECREATION COMMITTEE

August 3, 2001  
Page 4

Committee  
Report No. 01-132

Your Committee justified the proposed amendment to increase the percentage rate to 100 percent to be applied in the formula to determine the amount of cash required for in-lieu payments. Because it is the County's intention to purchase park lands with the funds and because the County is experiencing a demand for more park lands, in-lieu payments can no longer be discounted. The payment must be equivalent to the value of the subdivided lands.

Your Committee requested that the Department of the Corporation Counsel provide a written comparison of park dedication requirements for all counties within the State.

Your Committee noted that at its meeting of February 14, 2001, it recommended the establishment of a subcommittee to consider matters relating to park dedications. Subsequent to the meeting, the Director of Parks and Recreation agreed to facilitate discussions on the matter, thereby eliminating the need for the Council to establish a subcommittee.

The Director indicated that since the previous meeting, he has joined efforts with an Executive Assistant in the Mayor's Office to establish and facilitate a subcommittee of the Administration. As recommended during your Committee's discussion, he had intended to invite two Council members to serve as members of the subcommittee. However, because budget deliberations were ongoing at the time, the establishment of the subcommittee was postponed.

Your Committee deferred the matter pending further discussion.

By memorandum dated May 17, 2001, your Committee requested that the Corporation Counsel provide a written comparison of park dedication requirements for counties within the State of Hawaii.

By memorandum dated May 18, 2001, Councilmember Charmaine Tavares transmitted copies of a document dated August 2, 1995 entitled "Park Assessment Proposal" and a letter dated December 27, 1990 to former Councilmember Alice Lee, Chair for the Human Services, Parks and Housing Committee, relating to parks inventory and park development standards.

COUNCIL OF THE COUNTY OF MAUI

# PARKS AND RECREATION COMMITTEE

August 3, 2001  
Page 5

Committee  
Report No. 01-132

Your Committee noted that it is in receipt of a draft bill, dated May 24, 2001, entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 18.16.320 OF THE MAUI COUNTY CODE RELATING TO PARKS AND PLAYGROUNDS". The draft bill contains color-coded proposed revisions submitted by former Councilmember John W. Enriques and Councilmembers Hokama and Tavares, respectively, as follows: (1) to allow park dedications to occur in either the community plan district of the proposed subdivision or in an adjacent community plan region excluding Molokai and Lanai (Subsection 18.16.320.B.2.b, Enriques); (2) to revise the formula for payment of money in lieu of providing park lands by multiplying 100 percent of the assessed valuation of the subdivided lands prior to subdivision (Subsection 18.16.320.C.1, Tavares); (3) to provide full credit for privately owned and maintained parks and playgrounds (Subsection 18.16.320.E, Hokama); (4) to require the installation of automatic irrigation systems on land dedicated to the County (Subsection 18.16.320.E.5, Tavares); (5) to clarify that the Director of Parks and Recreation can make recommendations as to whether any of the required improvements should be waived because similar features are available nearby or because the improvements are impractical or unnecessary (Subsection 18.16.320.E.5, Tavares); and (6) to clarify that, although the Director of Parks and Recreation and Director of Public Works and Waste Management may make recommendations to the Council, the Council has the ultimate authority in determining whether any of the required improvements shall be waived (Subsection 18.16.320.E.5, Tavares).

By memorandum dated May 30, 2001, the Department of the Corporation Counsel transmitted a comparison chart and pertinent provisions on park dedication requirements for counties within the State of Hawaii.

By memorandum dated May 30, 2001, the Department of the Corporation Counsel transmitted a legal opinion advising that the provisions set forth in the proposed ordinance meet the requirements of State law. He also transmitted pertinent sections of State and County law which allow the Council to amend the formula for in-lieu payments should payments be determined inadequate.

At its meeting of May 31, 2001, your Committee met with the Director of Parks and Recreation, the Director of Public Works and Waste Management, and a Deputy Corporation Counsel.

COUNCIL OF THE COUNTY OF MAUI

# PARKS AND RECREATION COMMITTEE

August 3, 2001  
Page 6

Committee  
Report No. 01-132

Your Committee received testimony from one individual who inquired about the impact the proposed increase in the percentage rate would have on his proposed subdivision in Paia. He submitted copies of a preliminary landscaping and site plan for his project.

The Deputy Corporation Counsel provided an overview of his matrix comparing park dedication requirements for counties within the State of Hawaii. He distributed copies of a document entitled "Determination of Fair Market Value" providing excerpts of provisions relating to the determination of fair market value for the City and County of Honolulu and the Counties of Hawaii and Kauai.

In response to the testifier's inquiry, the Director of Parks and Recreation indicated that he was unable to provide a specific answer as to the impact the proposed increase in the percentage rate will have on his project in Paia. He stated that many factors must be considered when determining how a particular developer is to meet the park dedication requirements. However, the Director did indicate that many times, with small developments, the County chooses to require cash payments in lieu of land dedication.

Your Committee expressed its desire to provide incentives for developers to maintain their own parks as your Committee anticipated that the County will be unable to maintain an increased inventory of parks. An amendment incorporated in the proposed bill increases the credit from 50 percent to 100 percent for privately owned and maintained parks not open to the public. Your Committee also considered increasing the credit for privately owned and maintained parks open to the public to more than 100 percent.

Your Committee recommended that the proposed bill be revised to add language to Section 18.16.320.B.2 requiring Council approval should the land dedicated be in an adjacent community plan region. Your Committee voted to recommend the passage of the revised proposed bill on first reading.

By memorandum dated June 6, 2001, a the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 18.16.320 OF THE MAUI COUNTY CODE RELATING TO DEDICATION OF PARKS AND PLAYGROUNDS", incorporating

COUNCIL OF THE COUNTY OF MAUI

# PARKS AND RECREATION COMMITTEE

August 3, 2001  
Page 7

**Committee**  
**Report No.** 01-132

your Committee's recommended revisions and adding a Section 3 which provides that the ordinance shall not apply to subdivisions that have received final subdivision approval within 60 calendar days from the effective date of the ordinance.

Because of the additional revisions proposed by the Department of the Corporation Counsel, your Committee withheld its recommendation to pass the proposed bill on first reading.

By memorandum dated June 21, 2001, the Department of the Corporation Counsel transmitted the following documents as it relates to the proposed bill: (1) a copy of a memorandum dated June 8, 2001, to the Director of Public Works and Waste Management and the Administrator of the Land Use and Codes Division, Department of Public Works and Waste Management, requesting the Department's review of the proposed revisions; (2) a copy of a memorandum dated June 18, 2001, to the Department of the Corporation Counsel from the Director of Public Works and Waste Management transmitting comments on the proposed revisions; and (3) proposed revisions for Section 18.16.320.C relating to in-lieu payment and/or dedication, and for Section 3 relating to the effective date of the provisions within the proposed bill (Exhibits A and B).

By memorandum dated July 13, 2001, the Department of the Corporation Counsel transmitted language recommended by the Department of Public Works and Waste Management (Exhibit C) to further revise Section 18.16.320.C.

At its meeting of July 18, 2001, your Committee met with the Director of Public Works and Waste Management; the Chief of Planning and Development, Department of Parks and Recreation; and a Deputy Corporation Counsel.

Your Committee received testimony from an individual who expressed concerns about the County's acceptance of unimproved park land at the Kuau Bayview Subdivision. The testifier inquired about the formula for accepting in-lieu payment for park dedication and whether the 45 percent value accepted at final subdivision was more or less than what is now being considered by your Committee.

COUNCIL OF THE COUNTY OF MAUI

# PARKS AND RECREATION COMMITTEE

August 3, 2001  
Page 8

Committee  
Report No. 01-132

The Deputy Corporation Counsel provided an overview of the proposed revisions to the ordinance. He indicated that the Department of Public Works and Waste Management recommended revisions to the proposed ordinance subsequent to your Committee's meeting of May 31, 2001. The first proposed revision (Exhibit B), adds a Section 3 which provides that, if enacted, the proposed bill shall apply to building permits and subdivisions that receive approval after the effective date of the ordinance.

The Deputy Corporation Counsel further stated that the Land Use and Codes Division of the Department of Public Works and Waste Management proposed additional revisions (Exhibit C) to simplify the language in Section 18.16.320.C, relating to In-lieu payment and/or dedication.

In response to an inquiry by the testifier, the Deputy Corporation Counsel stated that the revised section that addresses in-lieu payment, will result in an increased contribution to the County for park acquisition because the amount of the assessment will be increased to 100 percent of value of the land at the time of final subdivision approval.

Your Committee voted to recommend passage of the proposed bill with revisions proposed in Exhibits B and C.

Your Parks and Recreation Committee **RECOMMENDS** that Bill No. \_\_\_\_\_ (2001), attached hereto, entitled "A BILL FOR AN ORDINANCE TO AMEND SECTION 18.16.320 OF THE MAUI COUNTY CODE RELATING TO DEDICATION OF PARKS AND PLAYGROUNDS" **PASS FIRST READING** and **BE ORDERED TO PRINT**.

Adoption of this report is respectfully requested.



COUNCIL OF THE COUNTY OF MAUI  
**PARKS AND RECREATION COMMITTEE**

August 3, 2001  
Page 9

Committee  
Report No. 01-132

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**JO ANNE JOHNSON** Chair

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**MICHAEL J. MOLINA** Member

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**ROBERT CARROLL** Vice-Chair

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**CHARMAINE TAVARES** Member

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**PATRICK S. KAWANO** Member