

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

December 6, 2002

Committee
Report No. 02-184

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

Chair and Members:

Your Land Use Committee, having met on June 17, 2002, June 20, 2002, September 16, 2002, September 30, 2002, October 2, 2002, October 14, 2002, and October 28, 2002, makes reference to County Communication No. 02-95, from Councilmember Jo Anne Johnson, transmitting a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 18 OF THE MAUI COUNTY CODE, PERTAINING TO SUBDIVISIONS" and requesting correction of flaws in the Agricultural District Zoning Ordinance, Chapter 19.30A, Maui County Code.

The purpose of the draft bill is to enact a temporary moratorium on Agricultural subdivisions.

By correspondence dated May 6, 2002, the Council Chair transmitted correspondence dated May 3, 2002, from the President of the Maui Contractors Association in opposition to the draft bill.

By correspondence dated June 10, 2002, Councilmember Johnson transmitted a copy of an Order from the Third Circuit Court of the State of Hawaii in the Hokulia case relating to agricultural subdivisions.

By correspondence dated June 14, 2002, the Chair of your Committee requested that the Planning Director assign a staff planner to review possible revisions to Chapter 19.30A, Maui County Code.

By correspondence dated June 14, 2002, Councilmember Johnson transmitted background information supporting the draft bill.

By correspondence dated June 17, 2002, Councilmember Johnson transmitted a Maui News article dated June 15, 2002, entitled "Agricultural land ordinance passed in '98 yields fewer 'gentleman's estates'".

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By correspondence dated June 17, 2002, Councilmember Johnson transmitted a Hawaii Island Journal article dated May 16, 2002, entitled "Putting Land in Farmers' Hands".

At its meeting of June 17, 2002, your Committee met with the Planning Director, the Administrative Planning Officer from the Department of Planning, the Deputy Director of Public Works and Waste Management, and a Deputy Corporation Counsel.

Your Committee received public testimony providing comments on agricultural zoning, agricultural subdivisions, and related matters from James Riley, DeGray Vanderbilt, and Doyle G. Betsill, Jr. In addition, Mr. Riley and Mr. Vanderbilt each submitted related written materials.

Your Committee recessed its meeting until June 20, 2002.

By correspondence dated June 19, 2002, the Planning Director informed your Committee that the Administrative Planning Officer would remain the primary staff for the Department of Planning regarding agricultural zoning.

At its reconvened meeting of June 20, 2002, your Committee met with the Director of Public Works and Waste Management, the Administrative Planning Officer from the Department of Planning, and a Deputy Corporation Counsel.

Your Committee received the following documents:

1. A draft bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19 OF THE MAUI COUNTY CODE, PERTAINING TO THE RURAL ZONING DISTRICTS", submitted by the Department of Planning. The purpose of the draft bill is to create new Rural zoning districts.
2. Various documents relating to agricultural zoning, agricultural subdivisions, and related matters submitted by DeGray Vanderbilt.
3. A proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 18 OF THE MAUI COUNTY CODE PERTAINING TO

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SUBDIVISIONS”, submitted by Councilmember Wayne K. Nishiki. The purpose of the proposed bill is to establish a discretionary-approval process, including a public hearing, for agricultural subdivisions.

Your Committee reviewed the draft bill submitted by the Department of Planning and the proposed bill submitted by Councilmember Nishiki. Your Committee noted that each of the legislative proposals could help to further the stated objectives of Chapter 19.30A, Maui County Code, by helping to ensure that agricultural-zoned lands are actually used for agricultural purposes to the greatest possible extent. Your Committee also noted that efforts should be made to inform the general public of the proposed legislation, as well as other possible proposals to further the stated objectives of the Agricultural District Zoning Ordinance. Therefore, your Committee voted to authorize the Chair of your Committee to conduct informational meetings throughout the County.

By correspondence dated July 9, 2002, the Chair of your Committee requested that the Planning Director inform your Committee of the legal basis for the "grandfather" status granted to certain agricultural subdivisions in 1998 prior to the enactment of Chapter 19.30A, Maui County Code, and provide a complete list of the grandfathered subdivisions.

By correspondence dated July 9, 2002, the Chair of your Committee requested that the Planning Director provide contact information for community organizations with memberships that would be interested in attending the planning information community meetings.

By correspondence dated July 26, 2002, the Planning Director suggested that the Chair of your Committee submit inquiries about grandfathered subdivisions to the Department of Public Works and Waste Management instead of to the Department of Planning.

By correspondence dated July 26, 2002, the Planning Director provided a list of members on the Lanai, Maui, and Molokai Planning Commissions and the Hana Advisory Committee to the Maui Planning Commission.

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By correspondence dated August 1, 2002, the Chair of your Committee invited Lanai community leaders to an upcoming informational community meeting.

By correspondence dated August 2, 2002, the Chair of your Committee requested that the Director of Public Works and Waste Management inform your Committee of the legal basis for the "grandfather" status granted to certain agricultural subdivisions in 1998 prior to the enactment of Chapter 19.30A, Maui County Code, and provide a complete list of the grandfathered subdivisions.

By correspondence dated August 2, 2002, Sumner Erdman, President of Ulupalakua Ranch, Inc., submitted written testimony opposing the proposed bill relating to a public-review process for agricultural subdivisions.

By correspondence dated August 5, 2002, the Chair of your Committee invited Maui community leaders to various upcoming informational community meetings.

By correspondence dated August 5, 2002, the Chair of your Committee transmitted a printed copy of a computer-generated slideshow providing background information on Chapter 19.30A, Maui County Code, and possible legislative means of helping to ensure that agricultural-zoned lands are actually used for agricultural purposes to the greatest possible extent.

By correspondence dated August 5, 2002, the Chair of your Committee transmitted legal opinions relating to the transfer of development rights and to restrictive covenants and conditions for agriculturally zoned property.

By correspondence dated August 6, 2002, the Director of Public Works and Waste Management transmitted a list of subdivisions that were granted "grandfather" status in 1998 prior to the enactment of Chapter 19.30A, Maui County Code.

By correspondence dated September 12, 2002, the Acting Council Chair requested an assessment of the informational community meetings.

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At its meeting of September 16, 2002, your Committee met with the Planning Director and the First Deputy Corporation Counsel.

Your Committee received various documents relating to agricultural zoning, agricultural subdivisions, and related matters submitted by DeGray Vanderbilt.

Your Committee deferred consideration of the matter.

At its meeting of September 30, 2002, your Committee met with the Director of Public Works and Waste Management, the Deputy Planning Director, the Administrative Planning Officer from the Department of Planning, and a Deputy Corporation Counsel.

Your Committee received public testimony providing comments on agricultural zoning, agricultural subdivisions, and related matters from 20 individuals. Whereas some testifiers insisted that public review of agricultural subdivisions was necessary to ensure legal compliance and agricultural preservation, others asserted that public review would result in costly, unfair delays to development projects.

Your Committee received written testimony in opposition to the proposed public review of agricultural subdivisions from Kent Smith, Chief Executive Officer, Smith Development; and Warren Watanabe, President, Maui County Farm Bureau. Your Committee received written testimony in support to the proposed public review of agricultural subdivisions from Lisa Hamilton, East Maui National Heritage Area Task Force.

Your Committee also received the following documents:

1. Correspondence dated September 30, 2002, from Councilmember Nishiki, transmitting a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 18 OF THE MAUI COUNTY CODE PERTAINING TO SUBDIVISIONS". The purpose of the draft bill is to establish a public-review process for agricultural subdivisions.

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2. Various documents relating to agricultural zoning, agricultural subdivisions, and related matters submitted by DeGray Vanderbilt and John Blumer-Buell, respectively.

After receiving the public testimony and engaging in a brief discussion, your Committee recessed its meeting until October 2, 2002.

By correspondence dated October 1, 2002, the Acting Council Chair transmitted correspondence dated September 30, 2002, from Glenn I Teves, providing comments on agricultural zoning, agricultural subdivisions, and related matters.

By correspondence dated October 1, 2002, Anthony J. Durso, Maui Cattlemen's Association, submitted written testimony opposing the proposed moratorium on ag subdivisions, and a proposed bill relating to a public-review process for agricultural subdivisions

By correspondence dated October 2, 2002, John Blumer-Buell submitted written testimony supporting a moratorium on ag subdivisions, and the creation of a subcommittee to review revisions to agriculture subdivisions.

By correspondence dated October 2, 2002, Councilmember Nishiki transmitted correspondence dated October 2, 2002, from James Richard McCarty, Esq., providing comments on agricultural zoning, agricultural subdivisions, and related matters.

At its reconvened meeting of October 2, 2002, your Committee met with the Planning Director, the Administrative Planning Officer from the Department of Planning, the Director of Public Works and Waste Management, and the First Deputy Corporation Counsel.

Your Committee received written testimony providing comments on agricultural zoning, agricultural subdivisions, and related matters from Sumner Erdman, President, Ulupalakua Ranch, Inc.; Anthony J. Durso, Maui Cattlemen's Association; and John Blumer-Buell.

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Your Committee reviewed the draft bill submitted by Councilmember Nishiki on September 30, 2002, and proposed revisions submitted by Councilmember Johnson. After lengthy discussion, your Committee deferred consideration of the matter.

By correspondence dated October 4, 2002, Councilmember Nishiki requested that the Mayor indicate whether he supports a public-review process for agricultural subdivisions.

By correspondence dated October 8, 2002, Councilmember Johnson transmitted a Ka Leo O Hawaii article dated October 4, 2002, entitled "Mass absenteeism on Maui land use issue admonished".

By correspondence dated October 8, 2002, Councilmember Nishiki transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 18 OF THE MAUI COUNTY CODE PERTAINING TO PUBLIC REVIEW OF AGRICULTURAL SUBDIVISIONS". The purpose of the draft bill is to establish a public-review process for agricultural subdivisions.

By correspondence dated October 11, 2002, Councilmember Carroll transmitted a Maui News article dated October 9, 2002, entitled "Small farms need marketing help, outside income in order to survive".

By correspondence dated October 14, 2002, your Committee Chair transmitted correspondence dated October 11, 2002, from Collette Machado, Trustee, Office of Hawaiian Affairs, supporting revisions to Maui County's Agricultural District Zoning Ordinances.

At its meeting of October 14, 2002, your Committee met with the Planning Director, the Deputy Planning Director, the Administrative Planning Officer from the Department of Planning, the Director of Public Works and Waste Management, and a First Deputy Corporation Counsel.

Your Committee received public testimony providing comments on agricultural zoning, agricultural subdivisions, and related matters from Warren Watanabe, President, Maui County Farm Bureau; Lynne Woods, President, Maui Chamber of Commerce; James Richard McCarty, Esq.; DeGray Vanderbilt; and

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Doyle G. Betsill, Jr. The testimony offered varying views on the most appropriate means of balancing the goals of preserving agricultural lands and promoting economic development.

Your Committee received correspondence dated October 14, 2002, from Councilmember Johnson, transmitting a Petition for a Declaratory Order filed with the State Land Use Commission regarding an agricultural subdivision in West Maui.

Your Committee also received written testimony from Warren K. Watanabe, President, Maui County Farm Bureau; and Lynne Woods, President, Maui Chamber of Commerce.

Your Committee discussed the potential merits of requiring Council review prior to the final approval of certain agricultural subdivisions. Your Committee noted that such a review could allow the Council and the public the opportunity to comment on whether a proposed subdivision complied with existing legal requirements (although the Director of Public Works and Waste Management would retain approval authority). In addition, the review process could serve to illuminate flaws in existing law. Administration officials sought more time to review the proposed legislation. Your Committee deferred consideration of the matter.

By correspondence dated October 15, 2002, the Chair of your Committee requested that the Director of Public Works and Waste Management comment on the draft bill submitted by Councilmember Nishiki at your Committee's meeting of October 2, 2002.

By correspondence dated October 16, 2002, Anthony J. Durso, Maui Cattlemen's Association, requested further community input on the draft bill submitted by Councilmember Nishiki at your Committee's meeting of October 2, 2002.

By correspondence dated October 18, 2002, the Chair of your Committee requested that the Corporation Counsel review and approve the draft bill submitted by Councilmember Nishiki at your Committee's meeting of October 2, 2002.

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By correspondence dated October 22, 2002, the Department of the Corporation Counsel submitted a proposed bill approved as to form and legality entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 18, MAUI COUNTY CODE, PERTAINING TO PUBLIC REVIEW OF AGRICULTURAL SUBDIVISIONS".

By correspondence dated October 25, 2002, the Director of Public Works and Waste Management provided comments

At its meeting of October 28, 2002, your Committee met with the Planning Director, the Deputy Planning Director, the Administrative Planning Officer from the Department of Planning, the Director of Public Works and Waste Management, the Deputy Director of Public Works and Waste Management, and the First Deputy Corporation Counsel.

Your Committee received public testimony providing comments on agricultural zoning, agricultural subdivisions, and related matters from 20 individuals. Whereas some testifiers insisted that public review of agricultural subdivisions was necessary to ensure legal compliance and agricultural preservation, other asserted that public review would result in costly, unfair delays to development projects.

Your Committee received testimony raising concerns or expressing opposition to the proposed bill transmitted by the Department of the Corporation Counsel on October 22, 2002, from Dan Davidson, Executive Director, Land Use Research Foundation of Hawaii; Heidi Bigelow; Lynne Woods, President, Maui Chamber of Commerce; Warren K. Watanabe, President, Maui County Farm Bureau; and Willard J. Stluka, President, Haleakala Ranch Company. Taytum Kimura submitted an excerpt from a promotional brochure for West Maui Land Company. Jim Gribaudo submitted photographs of Gribaudo's Nursery in the Puunoa Subdivision. DeGray Vanderbilt submitted a document from the Molokai Community Plan relating to land use.

The Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 18, MAUI COUNTY CODE, PERTAINING TO PUBLIC REVIEW OF

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AGRICULTURAL SUBDIVISIONS”, incorporating technical revisions to the proposed bill transmitted on October 22, 2002.

Your Committee discussed the potential merits of requiring Council review prior to the final approval of certain agricultural subdivisions. Your Committee noted that such a review could allow the Council and the public the opportunity to comment on whether a proposed subdivision complied with existing legal requirements (although the Director of Public Works and Waste Management would retain approval authority). In addition, the review process could serve to illuminate flaws in existing law.

Your Committee voted to recommend passage of the revised proposed bill transmitted by the Department of the Corporation Counsel, subject to additional minor revisions.

Your Committee is in receipt of a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 18, MAUI COUNTY CODE, PERTAINING TO PUBLIC REVIEW OF AGRICULTURAL SUBDIVISIONS”, incorporating the revisions approved by your Committee.

Your Land Use Committee RECOMMENDS that Bill No. _____ (2002), attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING TITLE 18, MAUI COUNTY CODE, PERTAINING TO PUBLIC REVIEW OF AGRICULTURAL SUBDIVISIONS”, be PASSED ON FIRST READING and be ORDERED TO PRINT”.

Adoption of this report is respectfully requested.

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ALAN M. ARAKAWA **Chair**

DANNY A. MATEO **Member**

ROBERT CARROLL **Member**

MICHAEL J. MOLINA **Member**

G. RIKI HOKAMA **Member**

WAYNE K. NISHIKI **Member**

JO ANNE JOHNSON **Member**

CHARMAINE TAVARES **Member**

DAIN P. KANE **Member**