

COUNCIL OF THE COUNTY OF MAUI
BUDGET AND FINANCE COMMITTEE

February 19, 2010

Committee
Report No. _____

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

Chair and Members:

Your Budget and Finance Committee, having met on January 12, 2010 and February 2, 2010, makes reference to County Communication No. 09-339, from Councilmember Joseph Pontanilla, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND".

The purpose of the proposed bill is to clarify the application process in Section 3.88.060, Maui County Code, for the submittal of grant proposals and allow for conservation organizations to secure other interests in property where the transfer of title is not appropriate (such as conservation easements).

By correspondence dated January 21, 2010, the Department of the Corporation Counsel transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE RELATING TO THE OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND AS IT PERTAINS TO COUNCIL APPROVAL AND CONSERVATION EASEMENTS". The revised proposed bill revises the title of the bill to provide a more specific description, clarifies that the amount of the grant shall be reduced to reflect any land acquisition costs, and clarifies that grants from the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund shall be transmitted to the Council for approval as a budget appropriation in the annual budget or by budget amendment.

The Director of Parks and Recreation noted that the revised proposed bill clarifies the language related to conservation easements to be consistent with the intent of the Council when the fund was created.

Your Committee voted 8-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Pontanilla, Vice-Chair Mateo, and members Baisa, Johnson, Medeiros, Molina, Nishiki, and Victorino voted "aye". Committee member Kaho`ohalahala was excused.

COUNCIL OF THE COUNTY OF MAUI
BUDGET AND FINANCE COMMITTEE

February 19, 2010
Page 2

**Committee
Report No.** _____

Your Budget and Finance Committee RECOMMENDS the following:

1. That Bill No. _____ (2010), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE RELATING TO THE OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND AS IT PERTAINS TO COUNCIL APPROVAL AND CONSERVATION EASEMENTS", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 09-339 be FILED.

This report is submitted in accordance with Rule 7 of the Rules of the Council.



JOSEPH PONTANILLA, Chair

ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE RELATING TO THE OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND AS IT PERTAINS TO COUNCIL APPROVAL AND CONSERVATION EASEMENTS

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 3.88.060 Maui County Code, is amended to read as follows:

"3.88.060 Review and transmittal to council. The mayor or the mayor's designee shall ensure that each grant proposal submitted is complete and meets all of the criteria stated in section 3.88.050. The mayor or the mayor's designee shall request appropriate agencies to review and comment on the grant proposal. Upon receipt of the agencies' comments, the mayor or the mayor's designee shall compile the agencies' comments and determine whether the grant proposal should be approved. The mayor or the mayor's designee shall obtain, or cause to be obtained, an appraisal of the property prepared by a qualified, disinterested appraiser, which appraisal shall be dated no more than one year from the date of the grant proposal. The amount of the grant shall be reduced to reflect any acquisition costs to the County. If the mayor or the mayor's designee determines that the grant proposal should be approved, the grant proposal, the agencies' comments, the appraisal, and a proposed grant agreement[, and a proposed budget ordinance amendment shall be transmitted to the council for its consideration. The amount of the grant shall be adjusted to reflect the cost of the appraisal to the County.] shall be transmitted to the council for approval as a budget appropriation in either:

1. The annual budget; or
2. A proposed budget ordinance amendment."

SECTION 2. Section 3.88.070 Maui County Code, is amended to read as follows:

"3.88.070 Ownership, use, and long-term stewardship of property acquired by a land conservation organization.

A. The grant agreement to the land conservation organization shall contain, among other things, provisions in substantially the following form:

1. "Title to or other interest in the subject property acquired by grantee with funds wholly or partially provided under chapter 3.88, Maui County Code, shall be held in perpetuity by grantee unless conveyed to the County of Maui or another qualified land conservation organization or agency approved by the county council.";

2. "The grantee shall submit to the mayor or the mayor's designee annual reports for the first three years documenting progress toward implementation of the long-term management plan and compliance with terms and conditions of this grant. Each report shall be incorporated into the director of finance's next quarterly report to the council. Subsequent annual reports will be provided to the County as specified in the perpetual conservation easement.";

3. "In the event that the grantee dissolves, title to or other interest in the subject property shall be conveyed to the County of Maui or to another qualified land conservation organization or agency approved by the county council.";

4. "Pursuant to section 3.88.070(B), Maui County Code, the grantee shall convey to the County of Maui at closing a perpetual conservation easement[.], if the grantee receives fee simple title to the property.";

5. "The subject property shall not be sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes as set forth in the conservation easement without the prior approval of the county council by resolution."; and

6. "The grantee shall not mortgage, hypothecate, or pledge the subject property or any portion thereof without the prior approval of the county council by resolution.".

B. [Subject] If the land conservation organization receives fee simple title to the property, the land conservation organization shall convey to the County, at closing, a perpetual conservation easement, subject to council approval pursuant to chapter 3.44 of this code, as amended[, the land conservation organization shall convey to the County at closing a perpetual conservation easement]. The easement shall contain, among other things, restrictive covenants in substantially the following form:

1. "This property has been acquired by (insert grantee's name here) with funds from the Maui County open space, natural resources, cultural resources, and scenic views preservation fund. Upon dissolution of (insert grantee's name here), title to or interest in this property shall be conveyed to the County of Maui or to another qualified land conservation organization or agency approved by the Maui county council.";

2. "The general public shall be allowed reasonable access to this property, provided that access may be limited or controlled for cultural and environmental resource protection and public safety."; and

3. "This property shall be managed for land conservation purposes only and shall not be converted to other uses except as approved by the Maui county council at such time as the potential conversions may be contemplated.".

C. The escrow company used to complete the closing of the subject property shall provide the mayor or the mayor's designee with copies of the closing documents, including a copy of the recorded deed, within sixty days of recordation of the deed. The escrow company shall be instructed that the conservation easement shall be recorded before, or at the time of, closing."

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



TRACI FUJITA VILLAROSA
First Deputy Corporation Counsel

S:\ALL\TFV\Ordinances\3.88openspace.wpd