

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

July 23, 2010

**Committee
Report No.** _____

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

Chair and Members:

Your Committee of the Whole, having met on January 20, 2010, and July 1, 2010, makes reference to County Communication No. 09-258, from the Planning Director and the Director of Public Works, transmitting a proposed bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS”.

The purpose of the proposed bill is to authorize the Planning Director to approve a proposed subdivision, provided that land uses within the subdivision are “consistent” with—even if they do not necessarily conform to—the County General Plan, the community plan, zoning, and the State land use classification. The proposed bill deletes the existing requirement that, apart from stated exceptions, land uses must “conform” to the County General Plan, the community plan, zoning, and the State land use classification in order for a proposed subdivision to qualify for approval.

Your Committee received a revised proposed bill that shifts the determination of consistency from the Planning Director to the Director of Public Works, after consultation with the Planning Director. The revised proposed bill also allows the Director of Public Works to impose conditions to ensure consistency of land uses for subdivisions that do not involve a Special Management Area (“SMA”) permit, planned development, or project district.

Your Committee notes that Section 18.04.030, Maui County Code (“MCC”), currently prohibits the Director of Public Works from approving any subdivision that “does not conform to or is inconsistent with the county general plan, community plans, land use ordinances, the provisions of the Maui County Code, and other laws relating to the use of land”. The Director of Public Works explained that there is no definition in the MCC for “conformity” or “consistency”, and that the requirement of conformity has been interpreted to mean that the State land use classification, community plan designation, and County zoning must match.

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The Director of Public Works explained that under the existing law, he is unable to approve a proposed subdivision when the land use designations do not conform, even if the proposed use is a permitted use within each designation. In such a situation, the subdivider must seek a State land use district boundary amendment, community plan amendment, or change in zoning, which can be time consuming and costly.

For example, if a parcel is classified as State Urban, designated in the community plan as Public/Quasi-Public, and zoned R-1 Residential, and is proposed for use as a school, the use would be permitted in all three land use designations and would be considered consistent with those designations. However, the various land use designations would not be considered conforming. Therefore, certain land use amendments would be required in order to receive subdivision approval.

The revised proposed bill defines “consistent” to mean “the land uses that are proposed within the subdivision are permitted by the county general plan, community plan, State land use classification, and zoning for that portion of the site where each land use is proposed.” If the Director of Public Works, after consultation with the Planning Director, determines that the land uses for a proposed subdivision are consistent with the land use designations, then the Director of Public Works will have the authority to approve the subdivision, even if the land use designations do not conform. According to the Planning Director and the Director of Public Works, this will streamline the process by alleviating the need for a subdivider to request an amendment to the nonconforming land use designation.

The Director of Public Works informed your Committee that four major projects have been stalled because of land use designations that do not match, resulting in the loss of hundreds of potential jobs.

Your Committee expressed concern that if subdividers are no longer required to pursue a State land use district boundary amendment, community plan amendment, or change in zoning in these situations to bring conformity among land use designations, there will be no mechanism to notify or include the public in the process. The Director of Public Works explained that Title 18, MCC, the Subdivision Ordinance, is a ministerial ordinance that does not allow for public input or discretionary review. Your Committee notes, however, that Title 18 incorporates an appeal procedure.

Your Committee also expressed concern about the inability of the Council to impose conditions to ensure consistency of land uses or to oversee the subdivision

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process. Nevertheless, your Committee was satisfied that the revised proposed bill, if enacted, will resolve a difficult dilemma for subdividers, streamline the subdivision process, and enable pending projects to proceed, creating much-needed jobs.

Your Committee expressed concern that the revised proposed bill gives the Director of Public Works the discretion, under Section 18.04.030(D), MCC, to impose conditions to ensure consistency of land uses, but does not require the Director to do so. Your Committee voted to recommend that the revised proposed bill be further revised to require the Director to impose any conditions necessary to ensure such consistency.

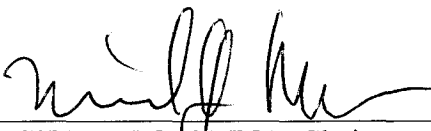
Your Committee voted 7-1 to recommend passage of the revised proposed bill on first reading. Committee Chair Molina, Vice-Chair Mateo, and members Baisa, Johnson, Medeiros, Pontanilla, and Victorino voted "aye". Committee member Kaho`ohalahala voted "no". Committee member Nishiki was excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Committee of the Whole RECOMMENDS the following:

1. That Bill No. _____ (2010), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04, MAUI COUNTY CODE, PERTAINING TO SUBDIVISION GENERAL PROVISIONS", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 09-258 be FILED.

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



MICHAEL J. MOLINA, Chair

ORDINANCE NO. _____

BILL NO. _____ (2010)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 18.04,
MAUI COUNTY CODE, PERTAINING TO
SUBDIVISION GENERAL PROVISIONS

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

SECTION 1. Section 18.04.020, Maui County Code, is amended
to read as follows:

"18.04.020 Authority and scope. [Authorized by]
A. Pursuant to section 8-5.3 of the revised charter
of the County of Maui (1983), as amended, all
subdivisions and consolidations, and all streets or
ways within the County created for the purposes of
subdividing land, shall be approved by the director in
accordance with this title.

B. Any person desiring to subdivide or
consolidate land shall submit plans and documents for
approval as provided by this title. No subdivision
plat may be filed with the bureau of conveyances or
land court or state department of taxation until
submitted to and approved by the director. Land shall
not be offered for sale, lease, or rent in any
subdivision, nor shall options or agreements for the
sale, lease, or rental of land in any subdivision be
made until approval for recordation of the final plat
is granted by the director as provided in this title,
unless such offer, option, or agreement expressly
provides in writing that such sale, lease, or rental
of land in the subdivision shall not occur nor become
effective unless and until approval for recordation of
the final plat is granted by the director as provided
in this title.

C. The requirements of this title shall not
apply to a consolidation/resubdivision of two or more
developable lots resulting in the same or fewer number
of developable lots that existed before the
consolidation/resubdivision action or to the

establishment of easements for ingress and egress where no new developable lots are created together with the establishment of the easement subject to the following conditions:

1. Compliance with title 19 of this code or chapter 205, Hawaii Revised Statutes or both;
2. Compliance with chapter 18.08 of this title except for section 18.08.090;
3. Compliance with chapter 18.12 of this title except for section 18.12.070; and
4. Compliance with chapter 18.24 of this title.

D. Parcels that have undergone consolidation/resubdivision under this subsection shall not qualify for this exception with respect to any subsequent consolidation/resubdivision of any of the parcels.

E. If the director [of public works] finds that the subdivision will have a significant or substantial impact upon public facilities or infrastructure, the director [of public works] may impose those requirements in title 18 that are appropriate.

F. The director [of public works] shall adopt rules to implement the provisions of subsection E of this section.

G. Except for family subdivisions as described in section 18.20.280 of this code, a consolidation and a concurrent resubdivision that does not create additional developable lots, road widening lots, utility lots, and easements for access or utility purposes, the director [of public works] shall not approve any subdivision unless the subdivider provides written verification of a long term, reliable supply of water issued by the director of the department of water supply as set forth in section 14.12.040 of this code."

SECTION 2. Section 18.04.030, Maui County Code, is amended to read as follows:

"**18.04.030 Administration.** A. This title shall be applied and administered within the framework of the county general plan, community plans, land use ordinances, the [provisions of the] Maui County Code, and other laws relating to the use of land. The director shall not approve any subdivision that [does

not conform to or is inconsistent] is not consistent with the county general plan, community plans, [land use ordinances, the provisions of the Maui County Code, and other laws relating to the use of land; provided, however, that this prohibition shall not apply to:] State land use classification, and zoning.

B. The requirement of consistency of subsection (A) shall not apply to the following:

1. Subdivisions created solely for the purpose of dedicating land to the county or State or for lands otherwise acquired by the county or the State for public purposes;

2. Subdivisions for affordable housing or park purposes where the county is the applicant;

3. Subdivisions created solely for designating roadway or access easements;

4. Consolidations and resubdivisions where no additional developable lots are created; or

5. Large lots in subdivisions containing one or more large lots where the large lot(s) [do not conform to or] are inconsistent with the aforementioned plans, ordinances, codes, and law, provided that the owners, their heirs, executors, and assigns of the subdivision execute an agreement with the director to have each large lot [conform to] be consistent with said plans, ordinances, codes, and laws then in effect upon actual development of the large lot, or future subdivision into lots which do not fall within the large lot definition.

C. Except as permitted under subsection (B), lands zoned interim shall not be subdivided.

D. The director shall determine whether a proposed subdivision is consistent with the county general plan, community plans, State land use classification, and zoning after consultation with the planning director. If the subdivision does not involve a special management area permit, planned development, or project district, the director shall impose any conditions necessary to ensure consistency of land uses and shall require that an applicant execute and record with the bureau of conveyances of the State of Hawaii or the land court of the State, as the case may be, a unilateral agreement incorporating such conditions, which shall be limited to a declaration of permissible uses. The unilateral agreement shall provide that the conditions shall run

with the land and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. The agreement shall be enforceable by the county, by appropriate action at law or suit in equity, against the parties and their heirs, personal representatives, successors, and assigns."

SECTION 3. Chapter 18.04, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

"18.04.109 Consistent. "Consistent" means the land uses that are proposed within the subdivision are permitted by the county general plan, community plan, State land use classification, and zoning for that portion of the site where each land use is proposed."

SECTION 4. Section 18.04.130, Maui County Code, is amended to read as follows:

"18.04.130 Director. "Director" means the [person who holds the office of the planning director of the county.] director of public works or the director's authorized representative."

SECTION 5. Section 18.04.140, Maui County Code, is repealed.

["18.04.140 Director of public works and waste management. "Director of public works and waste management" means the person who holds the office of the director of the department of public works and waste management of the county."]

SECTION 6. Section 18.04.320, is amended to read as follows:

"18.04.320 Reserve strips. "Reserve strip" means a nonaccess reservation[,] placed under public control, with conditions approved by the [director of planning,] director, for future public use."


SECTION 7. Section 18.04.470, Maui County Code, is amended to read as follows:

"18.04.470 Subdivision. "Subdivision" means improved or unimproved land or lands divided into two or more lots, parcels, sites, or other divisions of land for the purpose, whether immediate or future, of sale, lease, rental, transfer of title to or interest in, any or all such parcels, and includes resubdivision, and when appropriate to the context relates to the process of subdividing of the land or territory subdivided. Easements for roadway or access purposes shall be construed as subdivided land. [Except as otherwise permitted by law, the] The construction of four or more dwelling units on a lot, parcel, or site shall be subject to the provisions of this title."

SECTION 8. 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 9. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



DAVID A. GALAZIN
Deputy Corporation Counsel
County of Maui

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