

COUNCIL OF THE COUNTY OF MAUI

# GOVERNMENT RELATIONS COMMITTEE

November 21, 2003

Committee

Report No. 03-143

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

Chair and Members:

Your Government Relations Committee, having met on September 17, 2003, and November 5, 2003, makes reference to County Communication No. 02-234, from the Acting Council Chair, relating to establishing procedures for the administration and expenditure of the revenues from the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund, pursuant to Subsection 9-19.3 of the Charter of the County of Maui.

Your Committee notes that County Communication No. 02-234 was referred to the Council Chair for the 2003-2005 Council term at the Council meeting of November 15, 2002.

At its meeting of January 10, 2003, the Council referred County Communication No. 02-234 to your Energy, Environment and Economic Development Committee.

Your Committee further notes that at its meeting of February 7, 2003, the Council discharged your Energy, Environment and Economic Development Committee from consideration of County Communication No. 02-234, as requested by County Communication No. 03-45, from the Chair of the Energy, Environment and Economic Development Committee.

Your Committee further notes that at its meeting of February 7, 2003, the Council referred County Communication No. 02-234 to your Government Relations Committee.

By correspondence dated September 11, 2003, your Committee's Chair transmitted a draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.88, MAUI COUNTY CODE, RELATING TO THE OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND".

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The purpose of the draft bill is to establish procedures for the authorization of grants from the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund (Open Space Fund) to nonprofit land conservation organizations for the acquisition of real property for land conservation purposes.

By correspondence dated September 17, 2003, Dale B. Bonar, Executive Director, Maui Coastal Land Trust, transmitted an appended copy of the draft bill, with his suggested revisions.

At its meeting of September 17, 2003, your Committee met with the Mayor; the Director of Parks and Recreation; the Deputy Planning Director; the Deputy Director of Finance; the Chief of Planning and Development, Department of Parks and Recreation; and the Corporation Counsel.

Mr. Bonar testified in support of the bill, noting elements that were incorporated into his correspondence dated September 17, 2003.

Your Committee questioned Mr. Bonar about his recommendation for a conservation easement. Mr. Bonar stated that conservation easements on protected properties could cover a portion of a parcel or the entire parcel, depending on the features of the parcel.

The Mayor stated his support for the bill and noted that he is anxious to have an ordinance in place soon, as required by the most recent Charter amendment. He noted that the Office of Economic Development might be better suited to handle the oversight of the administration of the Open Space Fund than the Department of Finance.

The Deputy Director of Finance stated that the Department of Finance is unable to take on the additional task of administering grants from the Open Space Fund. He noted that other departments are better equipped to administer grants over the long term. He also noted that a long-term master plan should be developed regarding open space, and resources could be committed accordingly.

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The Director of Parks and Recreation stated that the Department of Parks and Recreation may not be the appropriate department to administer grants from the Open Space Fund. With regard to the Old Waihee Dairy site, he stated that the County would be interested in using a portion of the property to expand the Waihee Golf Course by an additional nine holes. He noted that the previous owner of the Old Waihee Dairy site purchased the property for golf course purposes. He also noted that in June 2003, the Waihee Golf Course was utilized for 95,000 rounds of golf. The maximum capacity for the golf course is 100,000 rounds of golf.

The Deputy Planning Director stated that his Department supported the bill, but would be unable to take on the additional task of administering grants from the Open Space Fund. The Department handles the development of the County's general and community plans, as well as oversees boards and commissions such as the Maui County Cultural Resources Commission and the Maui Planning Commission.

Your Committee noted several concerns regarding the administration of the Open Space Fund, including the following: 1) the need for a reporting requirement; 2) clarification on the ultimate decision-making authority; 3) the possibility of asking the Maui County Cultural Resources Commission for its comments on any proposal; 4) the implementation of a deadline to report receipt of County funds; 5) the most appropriate department to administer this grant; 6) the ability to utilize the fund for purposes other than land acquisition; 7) the possibility of hiring a consultant to assist with the selection of a grantee; and 8) the hiring of a grant manager to run the program.

The Corporation Counsel stated that a budget amendment would be required to appropriate monies from the Open Space Fund to either the County for the purchase of property, or to a nonprofit organization for a specific land acquisition.

Your Committee deferred action on this matter pending further discussion.

By correspondence dated October 27, 2003, the Corporation Counsel was asked to approve the draft bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.88, MAUI COUNTY CODE, RELATING TO THE OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND

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SCENIC VIEWS PRESERVATION FUND” as to form and legality. The Corporation Counsel was also asked to respond to a number of questions relating to appropriate uses of the fund, the administration of the fund, and other related questions.

By correspondence dated October 29, 2003, the Corporation Counsel transmitted the proposed bill, approved as to form and legality, entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.88, MAUI COUNTY CODE, RELATING TO THE OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND”. The purpose of the proposed bill is to establish procedures for the authorization of grants from the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund to nonprofit land conservation organizations for the acquisition of real property for land conservation purposes.

By correspondence dated November 4, 2003, Councilmember Johnson transmitted a revised draft bill entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.88, MAUI COUNTY CODE, RELATING TO THE OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND”. The draft bill would add a new subsection within the proposed bill establishing the Open Space Fund to authorize the purchase of development rights.

At its meeting of November 5, 2003, your Committee met with the Corporation Counsel and an Executive Assistant to the Mayor.

Dale B. Bonar, Executive Director, Maui Coastal Land Trust, submitted oral and written testimony in support of the proposed bill, with amendments. Teresa McHugh, Project Manager, The Trust for Public Land, Hawaii Field Office, also submitted written testimony in support of the proposed bill, with amendments.

The Executive Assistant to the Mayor stated the Mayor’s support for the proposed bill.

The Corporation Counsel provided an overview of his written response dated November 5, 2003, to the questions posed by your Committee in its correspondence dated October 27, 2003.

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After a lengthy discussion, your Committee stated its general support for the proposed bill, and indicated the following concerns: (1) that language should be inserted into the bill that would clearly state that the Open Space Fund shall only be used for land acquisition and not for maintenance of lands acquired under this fund; (2) that the nonprofit land conservation organization may use the land acquired with the Open Space Fund as collateral to fund the acquisition of additional property, subject to Council approval; and (3) the possibility that the County may not be able to capture the entire grant amount if the subject property is sold, exchanged, divested, or converted to other uses that are inconsistent with the purposes set forth in the proposed bill.

Your Committee further asked the Corporation Counsel to provide written guidance on whether or not funding from non-County sources (i.e., State or Federal funds for conservation programs) could be deposited into the Open Space Fund.

Councilmember Johnson provided an overview of her proposed amendment to the bill that would authorize the purchase of development rights (PDR). Basically, PDR allows the County to compensate a landowner who is willing to relinquish development rights. She also provided a copy of e-mailed correspondence entitled "LandWorks Action Alert: Call Your Senators Today!", which urged interested parties to contact their respective Senators to encourage them to cosponsor S. 1766, the Farm Conservation Funding Protection Act.

After a lengthy discussion, your Committee noted that the PDR concept is unique and worthy of further discussion, possibly in your Parks and Agriculture Committee. Councilmember Johnson agreed to send a new communication to the Council, relating to PDRs, for referral to the appropriate committee.

Your Committee voted to approve the proposed bill with the following revisions:

1. Include a statement to clearly state that the subject fund may only be used for land acquisition and not for maintenance of lands acquired under this fund.

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2. In Section 3.88.040, Subsection A, add a phrase such as “including, but not limited to, Chapter 198 Hawaii Revised Statutes”, to indicate that the acquisition of conservation easements is also permissible.
3. In Section 3.88.050(1), add the word “cultural” to clearly indicate that culturally significant areas are included in the criteria for selection of grant proposals.
4. In Section 3.88.070, Subsections A and B, add the word “substantially” to indicate that the phrasing in both the grant agreement and the deed shall contain the essence of the language provided, but will be flexible enough to meet the needs of the subject parcel.

Additionally, the Committee requested clarification on whether or not funding from non-County sources (e.g., State or Federal funds for conservation programs) could be deposited into the Open Space Fund.

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 suggested revisions.

Your Government Relations Committee RECOMMENDS the following:

1. That Bill No. \_\_\_\_\_ (2003), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.88, MAUI COUNTY CODE, RELATING TO THE OPEN SPACE, NATURAL RESOURCES, CULTURAL RESOURCES, AND SCENIC VIEWS PRESERVATION FUND” be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 02-234 be FILED.

Adoption of this report is respectfully requested.

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**DAIN P. KANE** **Chair**

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**MICHAEL J. MOLINA** **Member**

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**G. RIKI HOKAMA** **Vice-Chair**

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**CHARMAINE TAVARES** **Member**

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**DANNY A. MATEO** **Member**