

COUNCIL OF THE COUNTY OF MAUI

PARKS AND AGRICULTURE COMMITTEE

December 15, 2003

Committee

Report No. 03-159

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

Chair and Members:

Your Parks and Agriculture Committee, having met on November 20, 2003, makes reference to County Communication No. 03-275, from Councilmember Jo Anne Johnson, transmitting the following:

1. A draft bill entitled "A BILL FOR AN ORDINANCE TO ENABLE THE TRANSFER OF DEVELOPMENT RIGHTS".

The purpose of the draft bill is to enact an enabling ordinance to allow the County to facilitate the transfer of development rights (TDR), consistent with Chapter 46, Hawaii Revised Statutes (HRS).

2. A draft resolution entitled "REFERRING TO THE PLANNING COMMISSIONS A DRAFT BILL TO ENABLE THE TRANSFER OF DEVELOPMENT RIGHTS".

The purpose of the draft resolution is to refer to the planning commissions the above-referenced draft bill, pursuant to Charter Sections 8-8.4 and 8-8.6.

According to the communication, TDR allows the County to focus development where it is most wanted and to preserve agricultural land, recreational areas, open space, and other property for the community's benefit. As stated in Section 46-161, HRS, "transfer of development rights programs can help to ensure proper growth, while protecting open and distinctive areas and spaces of varied size and character."

TDR has been utilized successfully in many municipalities throughout the nation and has been praised by developers, conservationists, and land-use planners as critical smart-growth tools. The basic concept is simple. TDR allows a landowner to receive development rights in a region where the Council wants to encourage growth ("a receiving district") in exchange for the relinquishment of

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development rights in a region where the Council wants to encourage preservation (“a sending district”). Under the legislation, development rights can also be bought and sold, provided that the rights are transferred from a sending district to a receiving district.

By correspondence dated November 14, 2003, the Chair of your Committee requested that the Corporation Counsel review and approve the draft resolution.

By correspondence dated November 18, 2003, the Chair of your Committee transmitted an American Planning Association article entitled “Keeping ‘Em Down on the Farm – A look at a key conservation provision of the new federal farm bill”.

By correspondence dated November 19, 2003, the Chair of your Committee transmitted the following:

1. A copy of correspondence dated November 4, 2003, from Councilmember Johnson to your Government Relations Committee, transmitting 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”. The purpose of the draft bill is to authorize the purchase of development rights, allowing the County to compensate a landowner who is willing to relinquish development rights.
2. A copy of correspondence dated May 21, 1999, from former Deputy Corporation Counsel Kelly A. Cairns to former Councilmember J. Kalani English, regarding TDR-related legal issues.

At its meeting, your Committee met with the Director of Public Works and Environmental Management; the Planning Program Administrator, Long Range Planning Division, Department of Planning; and a Deputy Corporation Counsel.

Your Committee received the following:

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1. Paper copies of a computer-generated slideshow on TDR prepared by American Farmland Trust (AFT), a private, nonprofit organization founded in 1980 to protect the nation's farmland.
2. Written testimony dated November 20, 2003, from Warren Watanabe, President, Maui County Farm Bureau, providing comments on TDR.
3. Correspondence dated November 20, 2003, from the Department of the Corporation Counsel, transmitting a revised proposed resolution entitled "REFERRING A PROPOSED BILL PERTAINING TO THE TRANSFER OF DEVELOPMENT RIGHTS TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS", approved as to form and legality.

The purpose of the revised proposed resolution is to refer to the planning commissions the attached draft bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO ADD A NEW CHAPTER PERTAINING TO THE TRANSFER OF DEVELOPMENT RIGHTS". The purpose of the draft bill is to enact an enabling ordinance to allow the County to facilitate TDR consistent with HRS Chapter 46.

Two members of the public testified in general support of TDR. One of the testifiers noted that TDR could be an important preservation tool. The other testifier said that, to ensure TDR's effectiveness, landowners would have to be provided generous development rights.

Your Committee viewed the AFT computer-generated slideshow.

The Planning Program Administrator of the Long Range Planning Division informed your Committee that the Department of Planning generally supported TDR, but had concerns about some of the legislation's details.

Your Committee indicated that the TDR concept seemed appealing and that the planning commissions' comments would be instructive.

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Your Committee voted to recommend adoption of the revised proposed resolution.

Your Committee noted that the Chair of your Committee could provide the planning commissions with relevant background materials, including minutes of your Committee's meeting.

Your Parks and Agriculture Committee RECOMMENDS that Resolution No. _____, as revised herein and attached hereto, entitled "REFERRING A PROPOSED BILL PERTAINING TO THE TRANSFER OF DEVELOPMENT RIGHTS TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS" be ADOPTED.

Adoption of this report is respectfully requested.

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JO ANNE JOHNSON Chair

JOSEPH PONTANILLA Member

ROBERT CARROLL Vice-Chair

CHARMAINE TAVARES Member

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