

COUNCIL OF THE COUNTY OF MAUI

# PLANNING AND LAND USE COMMITTEE

July 18, 2003

Committee  
Report No.

03-64

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

Chair and Members:

Your Planning and Land Use Committee, having met on February 4, 2003, February 18, 2003, and June 17, 2003, makes reference to County Communication No. 02-114, from the Planning Director, transmitting a draft bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING OPEN SPACE ZONING DISTRICTS IN TITLE 19 OF THE MAUI COUNTY CODE". The purpose of the draft bill is to establish Open Space zoning and thereby enable the County to protect and manage sensitive environmental, scenic, and cultural resources.

Your Committee notes that County Communication No. 02-114 was referred to the prior Council's Land Use Committee at the Council meeting of May 30, 2002.

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

Rob Parsons testified in support of Open Space zoning.

Following a brief discussion, the Committee recessed its meeting until June 20, 2002.

At its reconvened meeting of June 20, 2002, the 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.

DeGray Vanderbilt testified in support of Open Space zoning.

The Committee received the following documents from the Department of Planning:

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1. A draft bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING OPEN SPACE ZONING DISTRICTS IN TITLE 19 OF THE MAUI COUNTY CODE". The purpose of the draft bill is to establish Open Space zoning.
2. Maps showing parcels within the Open Space designation in each community-plan district.

The Committee received a presentation from the Department of Planning on Open Space zoning. The presentation asserted that Open Space zoning is a critically important planning tool. The General Plan and various community plans are replete with policies favoring the protection of open space for cultural, environmental, and economic reasons, and Open Space zoning is necessary to implement those policies, according to the Department of Planning. The Committee observed the parcels that currently possess an Open Space designation in the various community plans. The Department of Planning noted that nearly all of those parcels are incapable of development for geographic, legal, or other reasons. Many of them are located on the coastline or in gulches.

The Committee deferred consideration of the matter pending further discussion.

By correspondence dated July 9, 2002, the Chair of the Committee requested the Department of Planning's assistance in identifying and contacting interested members of the public regarding upcoming community meetings regarding Open Space, Agricultural, and Rural zoning.

By correspondence dated July 26, 2002, the Planning Director transmitted the names of members of the Hana Advisory Committee, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

By correspondence dated August 1, 2002, the Chair of the Committee informed Lanai community leaders of a community meeting scheduled for August 6, 2002, at the Lanai High and Elementary School Cafetorium, regarding Open Space, Agricultural, and Rural zoning.

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By correspondence dated August 5, 2002, the Chair of the Committee informed North Shore Maui community leaders of a community meeting scheduled for August 14, 2002, at the Paia Community Center, regarding Open Space, Agricultural, and Rural zoning.

By correspondence dated August 5, 2002, the Chair of the Committee informed Upcountry community leaders of a community meeting scheduled for August 13, 2002, at the Kula Community Center, regarding Open Space, Agricultural, and Rural zoning.

By correspondence dated August 5, 2002, the Chair of the Committee informed West Maui community leaders of a community meeting scheduled for August 15, 2002, at the Lahaina Civic Center Social Hall, regarding Open Space, Agricultural, and Rural zoning.

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

By correspondence dated September 13, 2002, Councilmember Wayne K. Nishiki transmitted an undated correspondence from Richard Roshon, in support of Open Space zoning.

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

The Chair of the Committee provided background information on the community meetings he had recently conducted.

The Committee deferred consideration of the matter pending further discussion.

At its meeting of January 10, 2003, the Council referred County Communication No. 02-114 to your Planning and Land Use Committee (County Communication No. 03-10).

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By correspondence dated January 31, 2003, Lynne Woods, President, Maui Chamber of Commerce, expressed her organization's support for Open Space zoning.

By correspondence dated February 3, 2003, Dale B. Bonar provided comments relating to Open Space zoning.

By correspondence dated February 4, 2003, the Chair of your Committee proposed that single-family dwellings be prohibited in both the OS-1 and OS-2 districts.

By correspondence dated February 4, 2003, the Council Chair provided comments in response to the proposed prohibition on single-family dwellings.

At its meeting of February 4, 2003, your Committee met with the Planning Director, the Administrative Planning Officer of the Department of Planning, and a Deputy Corporation Counsel.

The Department of Planning provided a detailed analysis and a computer-generated slideshow regarding the draft bill to establish Open Space zoning transmitted by County Communication No. 02-114. They noted that the draft bill would create two zoning districts, OS-1 (Passive) and OS-2 (Active), which would enable the County to protect and manage sensitive environmental, scenic, and cultural resources. They further noted that the legislation was the culmination of lengthy deliberations by the Department of Planning, a technical advisory committee, and the planning commissions, all of which recommended approval of the draft bill. In addition, they noted that the draft bill would not actually change the zoning for any parcel; it would merely give the Council the capability of approving OS-1 or OS-2 zoning for particular parcels in the future.

The Department of Planning provided a printed copy of its computer-generated slideshow.

Your Committee acknowledged general support for the concept of Open Space zoning, but noted that further discussion was needed regarding the draft bill's details. Your Committee also noted that the question of whether to allow single-family dwellings as a special use in the OS-2 district, as recommended by the planning commissions, was a major policy issue.

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Your Committee deferred consideration of the matter pending further discussion.

By correspondence dated February 6, 2003, Councilmember Riki Hokama transmitted correspondence dated February 3, 2003, from Ralph Masuda, Vice President of Planning & Zoning, Castle & Cooke Resorts, LLC, raising concerns about the implementation of Open Space zoning on the island of Lanai.

By correspondence dated February 13, 2003, the Council Chair provided the results of research relating to Open Space zoning.

At its meeting of February 18, 2003, your Committee met with the Planning Director, the Administrative Planning Officer of the Department of Planning, and a Deputy Corporation Counsel.

Your Committee received correspondence from the Department of Planning suggesting several revisions to the draft bill.

In response to your Committee's inquiry, the Deputy Corporation Counsel provided information on potential "takings" liability relating to the enactment of Open Space zoning. He noted that individualized analysis is required to determine the constitutional appropriateness of the land-use regulations placed on any parcel.

Your Committee engaged in a line-by-line review of the draft. Your Committee generally commented favorably on the Department of Planning's proposed revisions and expressed support for additional similar revisions. The suggested revisions were primarily intended to refine the legislation to provide the County with the enhanced ability to protect and manage sensitive environmental, scenic, and cultural resources. In addition, technical corrections were noted. After a lengthy discussion, your Committee decided that the draft bill should not be revised to consolidate the OS-1 and OS-2 categories into a unified district.

Your Committee deferred consideration of the matter pending further discussion.

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By correspondence dated June 13, 2003, the Planning Director transmitted a revised draft bill, incorporating revisions discussed at your Committee's meeting of February 18, 2003, and provided additional suggested revisions.

By correspondence dated June 15, 2003, Kalista expressed support for Open Space zoning.

At its meeting of June 17, 2003, your Committee met with the Planning Director, the Administrative Planning Officer of the Department of Planning, and the Corporation Counsel.

The Chair of your Committee distributed the following documents provided by the Department of Planning:

1. A revised draft bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING OPEN SPACE ZONING DISTRICTS IN TITLE 19 OF THE MAUI COUNTY CODE", dated June 17, 2003, incorporating revisions discussed at your Committee's meeting of February 18, 2003, as well as additional revisions.
2. A chart summarizing the consensus of your Committee as expressed during its meeting of February 18, 2003.
3. A chart entitled "SINGLE FAMILY DWELLINGS Regulatory Options".

Your Committee expressed its general concurrence with the revisions contained in the documents distributed by the Chair of your Committee.

Your Committee engaged in lengthy deliberations regarding the legal and policy implications of the possible prohibition of single-family dwellings in the OS-2 district. Ultimately, your Committee concluded that such a prohibition would be consistent with the principles underlying Open Space zoning. Your Committee voted to revise the draft bill to delete the provision allowing for single-family dwellings in the OS-2 district and to incorporate other discussed revisions.

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Your Committee voted to recommend passage of the draft bill on first reading, as revised, and filing of the communication.

Your Committee is in receipt of a proposed bill entitled "A BILL FOR AN ORDINANCE ESTABLISHING OPEN SPACE ZONING DISTRICTS IN TITLE 19 OF THE MAUI COUNTY CODE", approved as to form and legality, reflecting your Committee's recommendation.

Your Planning and Land Use Committee RECOMMENDS the following:

1. That Bill No. \_\_\_\_\_ (2003), attached hereto, entitled "A BILL FOR AN ORDINANCE ESTABLISHING OPEN SPACE ZONING DISTRICTS IN TITLE 19 OF THE MAUI COUNTY CODE", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 02-114 be FILED.

Adoption of this report is respectfully requested.

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**WAYNE K. NISHIKI** **Chair**

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

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

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

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**ROBERT CARROLL** **Member**

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**JOSEPH PONTANILLA** **Member**

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**JO ANNE JOHNSON** **Member**

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**CHARMAINE TAVARES** **Member**

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**DAIN P. KANE** **Member**