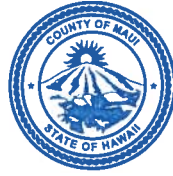


ALAN M. ARAKAWA
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Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

November 13, 2015

MEMO REPORT

To: Maui Planning Commission
Molokai Planning Commission
Lanai Planning Commission

From: William Spence 
Planning Director 

**SUBJECT: PROPOSED AMENDMENTS TO CHAPTER 2.80B, MAUI COUNTY
CODE, RELATING TO THE COMMUNITY PLANS AND ZONING (PC-21)**

INTRODUCTION

Earlier this year, the County Council's Planning Committee discussed a proposed bill that was intended to clarify the different roles of community plan land use designations and zoning. There appeared to be some misunderstanding of this bill's intent, resulting in a great variety of testimony from the general public.

Since that time, the Department has worked with Planning Committee staff and the Department of the Corporation Counsel to further revise the bill so that its intent is clearer and its language less likely to be misunderstood. A copy of the revised proposed bill is attached for your review and comment.

The bill would amend Chapter 2.80B, Maui County Code, relating to the general plan and community plans. Because this chapter is not considered a land use ordinance, it is not subject to the provision of the Maui County Charter that calls for review by the planning commissions. However, the Department feels that commission review is appropriate for two primary reasons: to obtain public and commission input on the revised bill before discussing with Council, and to find consensus with the commissions on the roles of community plan land use designations and zoning, especially since the community plan update process has recently begun.

BACKGROUND

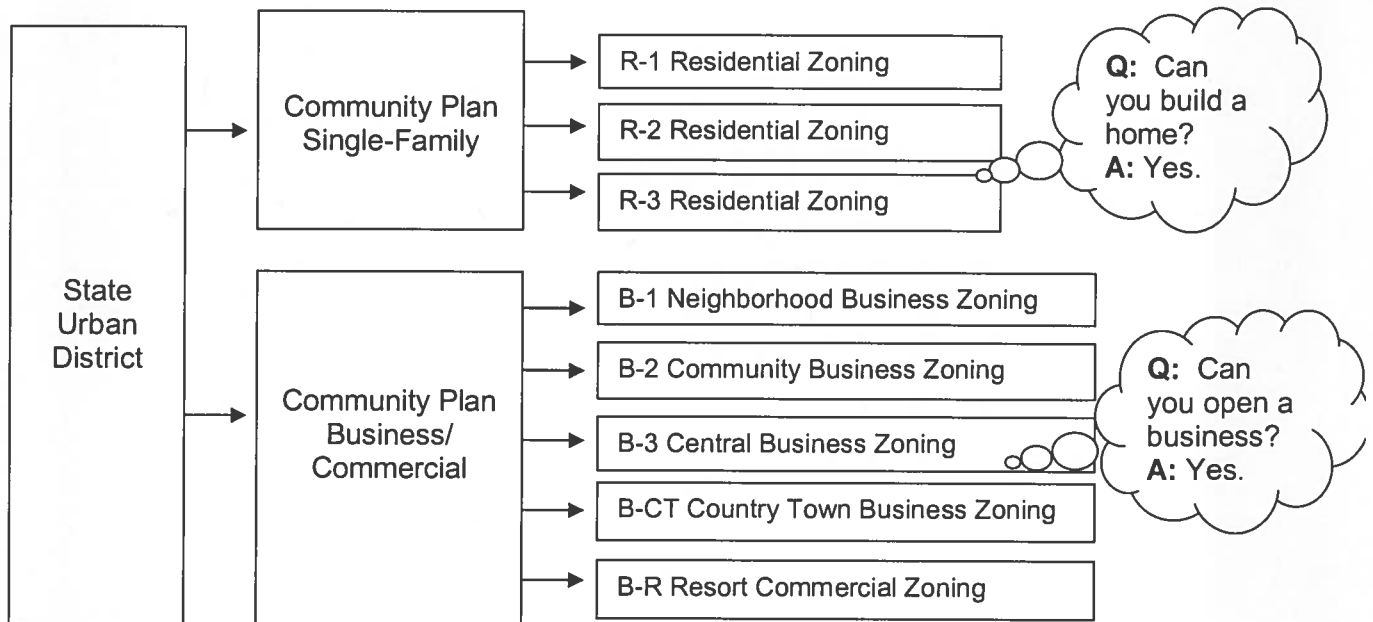
As you know, virtually every parcel of land is subject to three land use layers: state land use district, county community plan, and county zoning¹.

There are four state land use districts: Urban, Rural, Agricultural and Conservation. Chapter 205, Hawaii Revised Statutes, regulates the uses allowed in each district. The counties have no land use jurisdiction in the Conservation District; it is administered by the Department of Land and Natural Resources. There is detailed regulation in Chapter 205 for the Agricultural District, some regulation for the Rural District, and little regulation for the Urban District, leaving its regulations to the counties.

There are approximately 17 land use designations that are found in each community plan, though some plans may have additional or modified designations: Conservation, Agriculture, Rural, Single-Family, Multi-Family, Hotel, Business/Multi-Family, Business/Commercial, Business/Industrial, Light Industrial, Heavy Industrial, Airport, Public/Quasi-Public, Project District, Park, Park (Golf Course) and Open Space. The community plans offer very brief descriptions of these designations.

There are approximately 40 different zoning districts, not including project districts, provided in Title 19, Maui County Code. Zoning districts provide detailed regulation such as permitted uses and development standards (including building heights and setbacks).

In an ideal scenario, the layers all match with each other:



¹ Some parcels also have Maui Island Plan designations, are situated in the Special Management Area or a flood hazard area, or are subject to other special regulations. Parcels in the State Conservation District are not subject to County zoning.

DISCUSSION

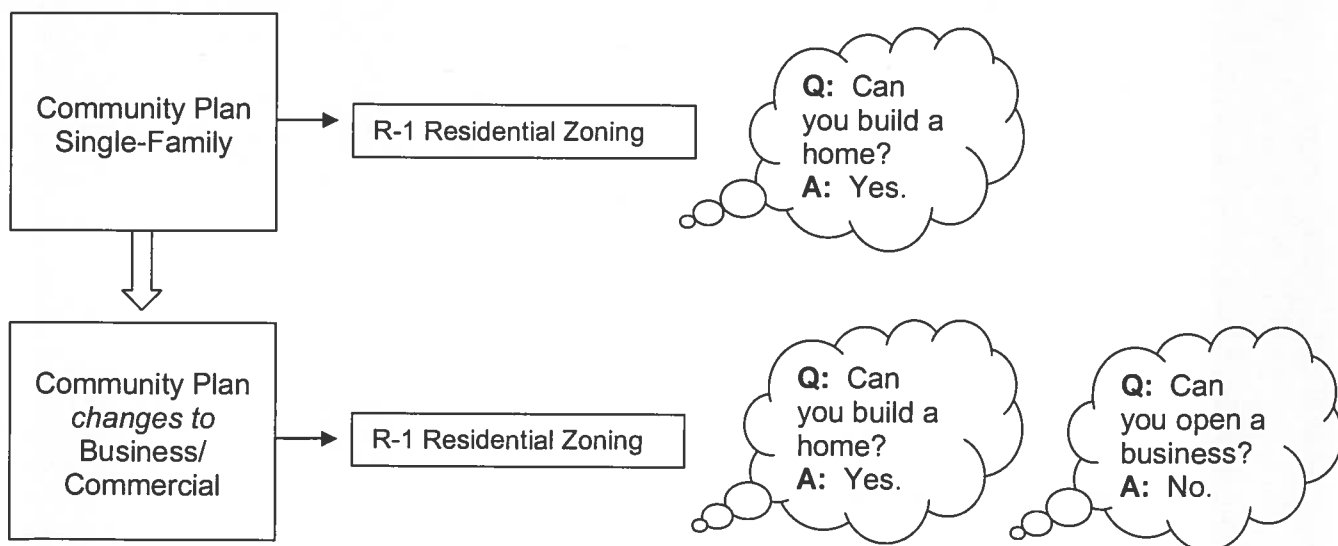
In these ideal scenarios, the distinction among the three layers is generally not significant. There is never a question whether a home can be built on a property that is designated Single-Family in the community plan and zoned R-1 Residential, or whether a restaurant can be opened on a property that is designated Business/Commercial and zoned B-CT Country Town Business.

Questions arise in two common circumstances: (1) when there is a “mismatch” such as Community Plan Business/Commercial with R-1 Residential zoning and (2) when there is a “match” but the zoning allows uses that are not listed in the community plan’s brief description.

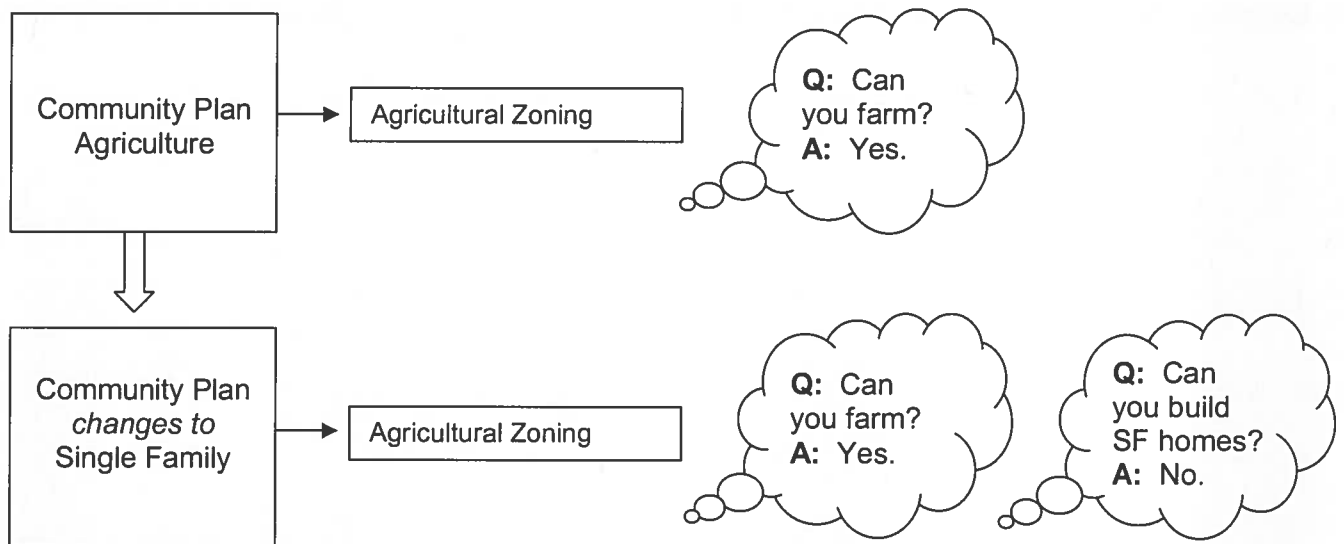
Mismatches: When community plans are updated, they frequently result in numerous “mismatches” because the community plan land use maps depict uses that are envisioned during the community plan period. For example, it is common for residential lands in urban areas to be re-designated from Single-Family to Business/Commercial to accommodate anticipated demand for commercial services. It is also common for agricultural lands that border existing residential development to be re-designated in the community plan from Agriculture to Single-Family to allow for residential growth. The community plan designations change, but the zoning does not. In these circumstances, what governs the use of the property?

The Planning Department believes that the zoning continues to regulate land use:

- If a property is re-designated from Single-Family to Business/Commercial in the community plan, and the property is zoned R-1 Residential, then the property can still be used for residential purposes that are not specifically allowed in the brief description of Business/Commercial in the community plan (“This includes retail stores, office, entertainment enterprises and related accessory uses.”). The property cannot be used for strictly business/commercial purposes unless the zoning is changed. The community plan change does not automatically allow business/commercial uses.



- If a property is re-designated from Agriculture to Single-Family in the community plan, and the property is zoned Agricultural, then the property can still be farmed, ranched or used for other active agricultural purposes that are not specifically allowed in the brief description of Single-Family in the community plan ("This includes single-family or duplex dwellings"). The property cannot be used for strictly single-family residential purposes unless the zoning is changed. The community plan does not automatically allow single-family development.



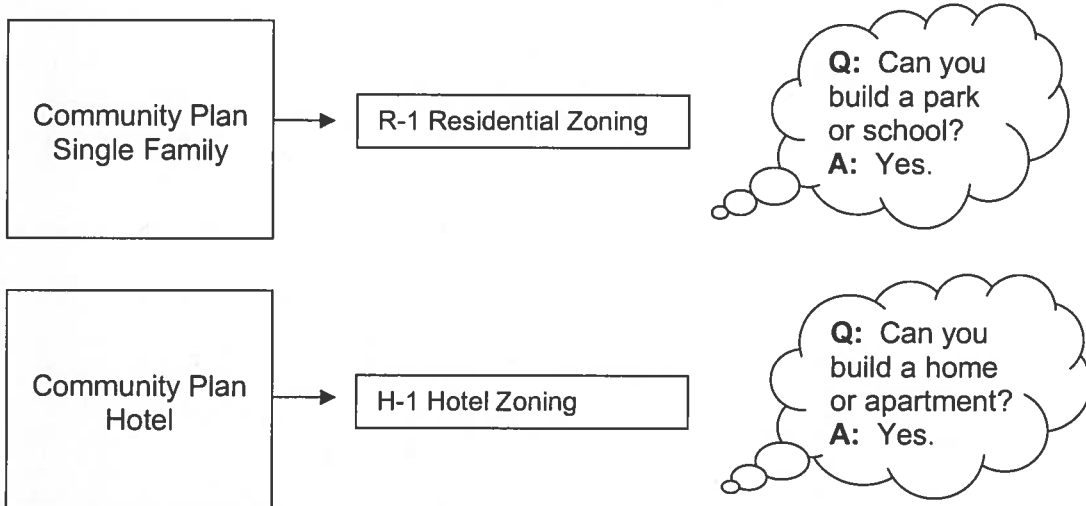
In these scenarios, the Planning Department believes that the community plan land use designations do not regulate land use because they do not (and should not) provide that level of detail. The zoning regulates land use because only zoning provides clear permitted uses and development standards, such as building heights and setbacks. Community plan land use designations are intended to be visionary, while zoning establishes specific regulation.

Therefore, the Planning Departments supports the proposed bill because it clarifies that zoning regulates land use and that community plan land use designations are intended to guide future decision-making.

Varied Uses: Adding to the complexity of this issue is the content of our zoning districts. Many zoning districts allow uses that are related and compatible with each other, though not necessarily related to the community plan description. For example, the Residential zoning districts allow parks, playgrounds and schools. A property that is designated Single-Family in the community plan and zoned R-1 Residential is one of the ideal "match" scenarios depicted above, and it seems appropriate that such a property could be developed with a park, a school or a single-family home. However, the description in the community plan states "this includes single-family and duplex dwellings" with no mention of related and compatible uses. On such a property, would a park or school be allowed?

Similarly, many of the districts have "stacked" uses, meaning that districts with high-intensity uses also allow low-intensity uses. For example, the Hotel zoning districts not only allow hotels and related accessory uses, they also allow all of the uses permitted in the residential and apartment districts, including single-family homes and apartments. A property that is designated Hotel in the community plan and zoned H-1 Hotel would appear to be an ideal "match" scenario like those depicted above, and it seems appropriate that such a property could be developed with a single-family home, an apartment building or a hotel. However, the Hotel description in the community plan states "This applies to transient accommodations which do not contain kitchens within individual units. Such hotel facilities may include permissible accessory uses primarily intended to serve hotel guests." On such a property, would a single-family home or an apartment building (with kitchens) be allowed?

Again, the Planning Department believes that the zoning regulates land use.



As noted above, the purpose of the proposed bill is to clarify that zoning regulates land use and that community plans are intended to be a vision that guides future decision-making.

STATUTORY REQUIREMENTS

In the general scenarios described above, zoning has a clear regulatory role while the community plans do not regulate land use. However, there are four specific instances where state and county laws give the community plans a clear regulatory role: changes in zoning, the subdivision of land, the county budget and capital improvement program, and developments in the Special Management Area.

A bill was adopted last year to allow that administrative actions, such as building, plumbing, grading or electrical permits, do not have to follow the community plans. Ordinance No. 4175, which took effect December 22, 2014, amended Section

2.80B.030.B to state that ministerial permits do not need to conform to the general plan, which includes the community plans. The amended version of Section 2.80B.030.B reads in its entirety:

“All agencies shall comply with the general plan, and administrative actions by agencies shall conform to the general plan, except for ministerial permits or approvals including, but not limited to, building permits, grading permits, plumbing permits, and electrical permits. All community plans, zoning ordinances, and subdivision ordinances shall conform to the general plan. Preparation of County budgets and capital improvement programs shall implement the general plan to the extent practicable. The countywide policy plan, Maui island plan, and community plans authorized in this chapter are and shall be the general plan of the County, as provided by section 8-8.5 of the revised charter of the County of Maui (1983), as amended.”

The Department believes this language provides specific instances when community plans have a clear regulatory role. These are further codified in other relevant sections of the Maui County Code as follows:

Zoning Ordinances: Subsection 19.510.040.A.4, Maui County Code, relating to changes of zoning, states that the County Council can grant a change of zoning if six criteria are all met; these criteria include “the proposed request meets the intent of the general plan and the objectives and policies of the community plans” and “the proposed request is consistent with the applicable community plan land use map.” This is very clear: a change in zoning must be consistent with the community plan. The County Council cannot approve a change in zoning unless it is consistent.

Changes in zoning are one of the primary methods by which the community plans are implemented. The community plan text often has policy statements about design, density and other development concepts that are implemented during zoning, whether by the specific zoning district that is established or through conditions of zoning. When a community plan land use designation is changed for a particular property, and then the zoning is changed to match the community plan land use designation, then the property can be used and developed in the manner envisioned by the community plan.

Subdivision Ordinances: Section 18.04.030, Maui County Code, relating to the administration of subdivisions, states that the Director of Public Works “shall not approve any subdivision that is not consistent with the County general plan, community plans, State land use classification, and zoning.” (There are five exceptions to this requirement, including subdivisions for public purposes or for affordable housing.)

County Budget and Capital Improvement Programs: Section 8-8.3 of the revised Charter of the County of Maui (2015), lists the powers, duties and functions of the Planning Director. Among these are to “review the lists of proposed capital improvement projects contemplated by the county....” Each year, the Planning Department reviews a list of proposed Capital Improvement Projects provided by the Budget Office.

In addition, state law requires that developments in the Special Management Area are consistent with the community plan, as follows:

Special Management Area: Subsection 205A-26(2)(C), Hawaii Revised Statutes, relating to Special Management Area guidelines, states that "no development shall be approved unless ... the development is consistent with the county general plan and zoning." This is also very clear: any development in the Special Management Area has to be consistent with both the community plan and the zoning.

This requirement has also been incorporated into the Special Management Area rules for each of the three island planning commissions.

CONCLUSION

The Planning Department believes that community plans and zoning play complimentary but different roles. Community plan land use designations are intended to depict what types of land uses are envisioned during the duration of the community plan. They are intended to guide decision-making for changes in zoning, subdivisions, budgeting and capital improvements, and developments in the special management area. They do not provide, nor are intended to be, exclusive or complete lists of land uses allowed. They do not provide specific development standards. Zoning regulates land use; zoning provides exclusive and complete lists of land uses and specific development standards.

Therefore, the Planning Department supports the proposed bill. The Planning Department further requests your comments and input so that a report can be transmitted to the County Council's Planning Committee.

Attachment

xc: Michele McLean, Deputy Director
General File

WRS:MCM

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ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 2.80B, MAUI COUNTY CODE, RELATING TO LAND USE DESIGNATIONS IN THE COMMUNITY PLANS

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

SECTION 1. The purpose of this ordinance is to define the term "land use designation" and to clarify the relationship between land use designations in community plans and uses and standards established by zoning.

SECTION 2. Section 2.80B.020, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Land use designation" means a designation or category assigned to a property in a community plan's land use map that identifies representative but not exclusive types of land use envisioned for that property throughout the community plan's planning period."

SECTION 3. Section 2.80B.070, Maui County Code, is amended by amending subsection E to read as follows:

"E. Each community plan shall contain:

1. A statement of the major problems and opportunities concerning the needs and development of the community plan area[;].

2. A statement of the social, economic, and environmental effects of such development[;].

3. The desired sequence, patterns, and characteristics of future development[;].

4. A description of the community plan area[;].

5. A statement of planning standards and principles relating to land uses within the community plan area[;].

6. A statement of urban and/or rural design principles and objectives for the community plan area[;].

7. For community plan areas on the island of Maui, urban and rural growth boundaries and a map delineating urban and rural growth areas, consistent with the general plan[;].

8. For community plan areas on the island of Maui, a designation of specific land uses within the urban and rural growth areas[;].

9. A list of areas, sites, and structures recognized as having historical or archaeological significance, and a list of scenic sites and resources[;].

10. A description of a projected multi-modal transportation system showing existing and proposed roadways, transit corridors, bikeways, and major thoroughfares[;].

11. Statements of intention relating to the location or improvement of all public service and transportation facilities[;].

12. Statements setting forth:

a. Problems relating to land uses; and

b. Projections relating to social, economic, and environmental effects of proposed development[;].

13. A statement of desired population density including visitors and residents[;].

14. [Specific] A land use map with specific land use designations based on property lines, to the extent practicable.

a. A land use designation determines the zoning that may be established for a property undergoing a change in zoning pursuant to title 19 of this code.

b. A land use designation shall not limit any use established by a property's zoning unless the community plan prohibits or restricts a particular use.

c. Notwithstanding the foregoing, a community plan may contain one or more project districts wherein permitted land uses are identified by percentage of total acreage and density in conformance with the general plan and community plan; provided, however, that the council shall subsequently zone each project district consistent with the identified land uses after holding a public hearing in the applicable community plan area[;].

15. A list of streetscape and landscaping principles and desired streetscape and landscaping improvements[; and].

16. An Action Element. The action element shall identify specific programs, projects, and regulations that need to be developed over the twenty-year planning period to implement the community plan. Further, identification of specific programs, projects, and regulations that need to be accomplished during the first ten years of that planning period shall be separately identified. This element shall include a prioritized general schedule and identify each implementing agency or person.”

SECTION 4. 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 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

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