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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

August 27, 2021

Mr. Eric Nakagawa, Director
Department of Environmental Management
Wailuku, Hawai'i 96793

Dear Mr. Nakagawa:

SUBJECT: **WETLANDS RESTORATION** (CARE-55)

May I please request your Department's comments on the proposed resolution entitled "REFERRING TO THE PLANNING COMMISSIONS A PROPOSED BILL RELATING TO WETLANDS RESTORATION AND PROTECTION."

The purpose of the proposed resolution is to refer to the Lāna'i, Maui, and Moloka'i Planning Commissions a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19, AND 20, MAUI COUNTY CODE, RELATING TO WETLANDS RESTORATION AND PROTECTION." The purpose of the proposed bill is to establish a program for wetlands restoration and protection.

May I further request your Department's comments on the proposed resolution and proposed bill by **Tuesday, August 31, 2021**. To ensure efficient processing, please transmit your response to care.committee@mauicounty.us, and include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Nicole Siegel at ext. 8008, or Rayna Yap at ext. 8007).

Sincerely,

Handwritten signature of Kelly Takaya King in black ink.

KELLY TAKAYA KING, Chair
Climate Action, Resilience, and Environment
Committee

care:misc:055aem01:nas

Attachment

Resolution

No. _____

REFERRING TO THE PLANNING COMMISSIONS
A PROPOSED BILL RELATING TO WETLANDS
RESTORATION AND PROTECTION

WHEREAS, the Council is considering a proposed bill to establish a program for wetlands restoration and protection; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983) ("Charter"), as amended, require that the appropriate planning commissions review proposed land use ordinances and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19, AND 20, MAUI COUNTY CODE, RELTING TO WETLANDS RESTORATION AND PROTECTION," a copy of which is attached as Exhibit "1," to the Lānaʻi Planning Commission, Maui Planning Commission, and Molokaʻi Planning Commission for appropriate action, in accordance with Charter Sections 8.8.4 and 8.8.6;
2. That it respectfully requests that the Lānaʻi, Maui, and Molokaʻi Planning Commissions transmit their findings and recommendations to the Council as expeditiously as possible; and
3. That certified copies of this Resolution be transmitted to the Mayor, the Planning Director, and the Lānaʻi, Maui, and Molokaʻi Planning Commissions.

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING TITLES 18, 19, AND 20, MAUI COUNTY CODE, RELATING TO WETLANDS RESTORATION AND PROTECTION

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

SECTION 1. The purpose of this Ordinance is to protect the natural environment, mitigate climate change, and work toward resilience by establishing a program for wetlands restoration and protection in Titles 18, 19, and 20 of the Maui County Code.

SECTION 2. Article II, Title 19, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

“Chapter 19.47

WETLANDS OVERLAY DISTRICT

Sections:

19.47.010	Establishment.
19.47.020	Policy.
19.47.030	Report on feasibility and advisability of wetlands restoration or protection.
19.47.040	Consideration of report.
19.47.050	Prohibitions.
19.47.060	Mapping.
19.47.070	Clean Water Act and Coastal Zone Management Act.

19.47.010. Establishment. The council may establish wetlands overlay district zoning on any property for the purpose of restoring or protecting a wetland on the property. “Overlay district” and “wetlands” mean the same as defined in section 2.80B.020.

Exhibit “1”

19.47.020. Policy. It is the policy of the County of Maui that wetlands should be restored or protected. The council's intent is to restore and protect wetlands beyond what is required by the Clean Water Act, Coastal Zone Management Act, or any State law. All discretionary permits issued by the County must be consistent with this policy.

19.47.030. Report on feasibility and advisability of wetlands restoration or protection. A. The planning director must produce, or cause to be produced, a report on the feasibility and advisability of wetlands restoration or protection on the property prior to approval of any of the following in the wetlands overlay district:

1. Community plan amendment under section 2.80B.110.
2. Subdivision approval under section 18.08.100.
3. Change in zoning under section 19.510.040.
4. Conditional zoning under section 19.510.050.
5. District boundary amendment under chapter 19.68.
6. Special use permit under section 19.510.070.
7. Grading or grubbing permit under chapter 20.08.

B. Any report required by subsection (A) must be shared with the decision-making officer or agency and any advisory agency. The report must include the following:

1. The ability of the wetland to filter harmful toxins, nutrients, and sediment from surface and stormwater runoff.
2. The ability of the wetland to store floodwaters and reduce the magnitude of flood events.
3. The ability of the wetland to provide valuable habitat for a diverse array of flora and fauna, including any existing rare, threatened, or endangered species.
4. The ability of the wetland to maintain surface-water flow during dry periods.
5. The impact of any excessive siltation resulting from surface runoff from construction sites and lack of erosion control on steep slopes.
6. The impact of pollution by garbage, litter, and refuse.
7. The impact of a reduction in the flow of watercourses due to destruction of wetlands.

19.47.040. Consideration of report. A. The decision-making officer or agency on an application referenced in subsection 19.47.030.A must consider any report required by the subsection and the policy in section 19.47.020 in determining

whether to approve, disapprove, approve with modifications, or approve with conditions the application.

B. Any ordinance for an approval referenced in section 19.47.030.A must include the council's finding that either:

1. The property does not include any wetlands for which restoration or protection is feasible or advisable; or
2. The property owner has executed a unilateral agreement, to be recorded with the bureau of conveyances or land court, for adequate wetlands restoration or protection.

19.47.050. Prohibitions. The following are prohibited in the wetlands overlay district:

A. The placement of new structures or impervious surfaces.

B. Excavation or blasting.

C. Dumping, piling, or disposal of refuse, yard debris, or other material.

D. The development of structures and land uses on wetlands that will contribute to the pollution of surface and ground water by sewerage, toxic substances, or sedimentation.

E. The destruction of, or significant changes to, wetlands that provide flood protection, recharge the groundwater supply, and augment stream flow during dry periods and filtration of water flowing into ponds and streams.

19.47.060. Mapping. The planning director must transmit to the planning commissions, council, and director of public works, mapping that shows the location of wetlands throughout the County.

19.47.070. Clean Water Act and Coastal Zone Management Act. This chapter is not intended and may not be interpreted to conflict with the Clean Water Act or the Coastal Zone Management Act or with any agency's authority under those laws."

SECTION 3. Section 18.08.100, Maui County code, is amended to read as

follows:

“18.08.100 Approval. A. [Director's review period.]

1. Within thirty days after submission of the preliminary plat of a subdivision to be processed as an affordable housing project, the director [shall] must review the plan and may [give approval of] approve the preliminary plat as submitted, or as it may be modified, or [may] disapprove [the same] and [shall] must express [the disapproval and] the reasons [therefor] for the disapproval in writing.

2. Within forty-five days after submission of the preliminary plat of a subdivision for a long-term residential development [which] that is not to be processed as an affordable housing project or after submission of the preliminary plat of a subdivision [which] that is outside of the scope of subsection 18.08.100.A.1, the director [shall] must review the plan and may [give approval of] approve the preliminary plat as submitted, or as it may be modified, or [may] disapprove [the same] and [shall] must express [the disapproval and] the reasons [therefor] for the disapproval in writing.

B. The director may also defer consideration of the preliminary plat pending receipt of additional information, in which case the running of time is suspended.

C. Approval of the preliminary plat [shall] must indicate the director's directive to prepare detailed drawings on the plat submitted, [provided] as long as there is no change in the plan of subdivision as shown on the preliminary plat and there is full compliance with all requirements of this chapter. The action of the director with reference to any attached documents describing any conditions [shall] must be noted on two copies of the preliminary plat. One copy [shall] must be returned to the subdivider and the other retained by the director. At such time the director [shall] must stamp the two preliminary plats[;], as follows:

1. “Subdivider authorized to prepare detailed drawings on plat as submitted including corrections noted;”

2. “Recordation with the Bureau of Conveyances, State of Hawaii, or State Department of Taxation, not authorized until approved for recordation at a later date.”

D. If no action (approval, disapproval, modification or deferral) is taken by the director within the review period identified in subsection 18.08.100.A, or such longer period as may have been agreed upon in writing, the preliminary plat [shall] will be [deemed] automatically approved, and it [shall] must be the duty of the

director to endorse [his] approval of the preliminary plat, [upon the face thereof. Such] The director's approval [by the director shall] must not exempt the subdivider from compliance with the mandatory requirements of this [ordinance] chapter.

E. In the wetlands overlay district, the director must consider any report required by subsection 19.47.030.A and the policy in section 19.47.020."

SECTION 4. Section 19.06.010, Maui County Code, is amended to read as follows:

"19.06.010 Districts designated. The County [shall be] is divided into the following use zone districts:

- A. Open space districts:
 - 1. OS-1.
 - 2. OS-2.
- B. Residential districts:
 - 1. R-1.
 - 2. R-2.
 - 3. R-3.
- C. R-0 zero lot line residential district.
- D. Two-family districts:
 - 1. D-1.
 - 2. D-2.
- E. Apartment districts:
 - 1. A-1.
 - 2. A-2.
- F. Hotel districts:
 - 1. H-1.
 - 2. H-M.
 - 3. H-2 and hotel.
- G. Business districts:
 - 1. SBR service.
 - 2. B-CT country town.
 - 3. B-1 neighborhood.
 - 4. B-2 community.
 - 5. B-3 central.
 - 6. B-R resort commercial district.
- H. Industrial districts:
 - 1. M-1 light.
 - 2. M-2 heavy.
 - 3. M-3 restricted.
- I. Park districts:
 - 1. PK.
 - 2. GC.

- J. Airport district.
- K. Agricultural district.
- L. Rural districts:
 - 1. RU-0.5.
 - 2. RU-1.
 - 3. RU-2.
 - 4. RU-5.
 - 5. RU-10.
 - 6. County rural.
- M. Public/quasi-public districts:
 - 1. P-1.
 - 2. P-2.
- N. Kihei research and technology park district.
- O. Maui research and technology park district.
- P. Napili Bay civic improvement district.
- Q. Urban reserve district.
- R. Interim.
- S. Maui County historic districts.
- T. Project districts.
- U. Wetlands overlay district.

SECTION 5. Section 20.08.080, Maui County Code, is amended to read

as follows:

“20.08.080 Grading and grubbing permit review.

Drainage, engineering slope hazard report, and erosion control plans [shall] must be submitted to the applicable soil and water conservation [district(s)] district and to the department of land and natural resources' state historic preservation division for review and comment. Applicants [shall] must provide information sufficient to enable the reviewing agencies to determine that the proposed work will be in conformance with the most current standards on file at the department of public works [of the] soil and water conservation [district(s)] district and will meet the requirements of chapter 6E, Hawaii Revised Statutes, and related administrative rules. Final approval or disapproval [shall] must be made by the County within ten days after receiving the reviewing agencies' comments. In the wetlands overlay district, the director must consider any report required by subsection 19.47.030.A and the policy in section 19.47.020.”

SECTION 6. 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 7. This Ordinance takes effect one year after its approval.

care:misc:055abill02:dr/jbf