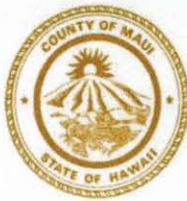


MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

September 28, 2021

Honorable Michael P. Victorino, Mayor
County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 9/29/21
Mayor Date

For transmittal to:

Honorable Kelly Takaya King, Chair
and Members of the Climate Action, Resilience and
Environment Committee
200 South High Street
Wailuku, Hawaii 96793

Dear Chair King and Committee Members:

SUBJECT: WETLANDS RESTORATION (CARE-55) (RFC 2021/0154)

Thank you for the opportunity to provide supplemental comments on the proposed resolution entitled "Referring to the Planning Commissions a Proposed Bill Relating to Wetlands Restoration and Protections." The Department of Planning (Department) offers the following comments and suggestions to supplement and expand on the initial testimony provided on August 30, 2021 to the Committee.

There is great value in comprehensively addressing ecologically connected land use and development patterns, and in leveraging nature-based solutions to both reduce flood risk and conserve and enhance wetlands ecosystems in an ecologically sound, science-based way. It is not clear, however, that the current form of the proposed bill will accomplish these goals.

Similar to a discussion with Councilmember Sinenci's office relating to a draft bill to create a process to establish Cultural Overlays, the process to designate Wetlands Overlays is not zoning and may not be appropriate as a new zoning district. Certainly there will be restrictions on land uses or types of construction that are allowed within a Cultural Overlay or Wetlands Overlay, but the process to create overlays would be better established in Title 20 rather than Title 19; amendments to Title 19, among other titles of the Maui County Code, would still be needed for the overlays to have their intended effect.

RECEIVED
2021 SEP 29 PM 3:28
OFFICE OF THE
COUNTY COUNCIL

Honorable Michael P. Victorino
For Transmittal to:
Honorable Kelly T. King, Chair
and Members of the Climate Action, Resilience and
Environment Committee
September 28, 2021
Page 2

The proposed bill does not provide a process or criteria for the Council to establish wetlands overlays. It creates mapping and reporting requirements that have to be met for certain types of development approvals, which could be enacted without any type of overlay. For the bill to allow the Council to establish wetlands overlays, though, a process and criteria must be identified.

The Department offers the following specific comments on the proposed bill:

- Definitions – The proposed definition of “overlay district” could read “an area where certain requirements or restrictions may be imposed in addition to or beyond zoning and other land use regulations.” Ideally, the definition of “wetland” would reference an existing authority that has already mapped wetlands, such as the U.S Fish and Wildlife Service, whose data is used by the State GIS Program, or an authority with expertise to confirm wetlands, because there is no known County expertise to administer the definition as drafted.
- Section 19.47.010 – Revise to “Purpose” instead of “Establishment;” move to a new chapter in Title 20; and revise to clearly indicate the purpose of the new chapter, for example: “The council may establish wetland overlays on any property to ensure comprehensive flood risk reduction and integrated watersheds and wetlands management.” The bill must establish a process and criteria for the council to follow in establishing a wetlands overlay.
- Section 19.47.020 – This should be moved to a new chapter in Title 20. It appears that this is more than a policy – it is a requirement – so this could be revised to “Intent” instead of “Policy.”
- Section 19.47.030 and 040 – These are important requirements to ensure that wetlands are given proper consideration in permit reviews. These two sections can be placed in the new Title 20 chapter and should also be added to sections 2.80B.110 (general plans); 18.08.100 (subdivisions); 19.68 (district boundary amendments); 19.510.040, 050 and 070 (changes in zoning, conditional zoning and county special use permits, respectively); and 20.08 (grading permits) so that they can be administered for each type of action. The language in the new Title 20 chapter can refer to the planning director and public works director for those sections that each administers.

It is noted that not all actions in section 19.47.030.A are approved by ordinance, so the language in section 19.47.040.B should be revised accordingly. Also, as the Department previously noted, ordinances should not contain a narrative on findings or conclusions; such information is more properly contained in the accompanying committee report. Alternative language could be: “Prior to approving an ordinance for any community plan amendment, change in zoning or district boundary amendment, the council must first find that either....”

Honorable Michael P. Victorino

For Transmittal to:

Honorable Kelly T. King, Chair

and Members of the Climate Action, Resilience and
Environment Committee

September 28, 2021

Page 3

- Sections 19.47.045 and 050 – These sections identify uses that are permitted and prohibited, respectively, thus raising the question about any use that is not included in either section. It is unusual to identify both permitted and prohibited uses, rather than one or the other. Whether a use should be permitted or prohibited should be driven by the report required by Section 19.47.030. Section 045 should be clear that the listed permitted uses can only be conducted if allowed by the underlying zoning. Subsection 19.47.050.A should be clarified to allow structures that are necessary for wetland protection, promote ecosystem habitat or facilitate restoration. The Council should be mindful of the restrictions in Section 19.47.050 that could result in a property having little or no economically viable use.
- Section 19.47.060 –The bill should provide (in Title 20) criteria for, or resources to consider in, mapping wetlands. Ideally, existing agencies with expertise would be consulted or their maps or existing data layers would be used. This section could encourage coordination with federal and state partners to support alignment with the Clean Water Act and the Coastal Zone Management Act, as well as the Endangered Species Act and Migratory Bird Treaty Act as they relate to wetland species habitat. Additionally, alignment with existing state and county plans, including the Maui Island Plan and community plans, should be considered here. Lastly, regarding subsection 19.47.060.C, changes in zoning are not needed to implement wetlands protections in accordance with maps or reports, or with an overlay; this can be deleted.
- Section 19.47.070 – This is unusual language; it is more common (and understandable) to simply state that if there is a conflict between or among federal, state and county laws, then the more restrictive must apply.
- Subsection 2.82.040.J – There are many terms used in this section that should either be defined or should refer to where the terms are already defined. The concepts and criteria are technical, which is missing from SECTION 3, thus suggesting that consistency is needed between the two.
- Section 18.08.100.E – It is not clear what action, if any the Council might take if the director makes a contrary decision.
- Section 19.06.010 – Wetlands overlays are not zoning districts and should not be listed here. A new chapter in Title 20 is the most appropriate location.
- Section 20.08.080 – Same comment as above: it is not clear what action, if any the Council might take if the director makes a contrary decision.

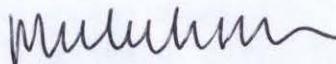
Honorable Michael P. Victorino
For Transmittal to:
Honorable Kelly T. King, Chair
and Members of the Climate Action, Resilience and
Environment Committee
September 28, 2021
Page 4

To better complement existing federal and state initiatives and regulations, to implement nature-based solutions to reduce flood risk, and to conserve and enhance wetlands ecosystems, a more comprehensive effort should be initiated to bring together public and private expertise to assess existing data and resources, and to further investigate what additional resources are needed to effectively administer such a program. Whether that is spearheaded by the CARE Committee, its Chair, a temporary investigative group or another entity, the Department is ready and willing to participate in such an effort. Other agencies to include would be the Department of Public Works, the Department of Land and Natural Resources (several divisions), the Army Corps of Engineers, the U.S. Fish and Wildlife Service and the Federal Emergency Management Agency. Alternatively, or in addition to such an effort, funding could be provided to conduct a comprehensive analysis of existing and potential wetlands, using all available resources including those noted above, and to create a baseline map and report that could be updated at regular intervals. A wetlands ordinance could then be drafted to create regulations based on the report and map.

Without such a coordinated effort, a County ordinance could conflict with other programs or requirements, thus leaving the public, property owners and agencies without a clear sense of what process to follow or whose expertise or data prevails.

In conclusion, with consideration of the above suggestions, a revised bill would have the potential to result in a comprehensive resource protection program that could reduce flood risk and improve the resiliency of the community and environmentally sensitive ecosystems. Thank you for your consideration of these comments. If additional information or clarification is required, please feel free to contact me.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

xc: Jordan Hart, Deputy Planning Director (PDF)
Clayton I. Yoshida, Planning Program Administrator (PDF)
Jeffrey P. Dack, Current Planning Division Supervisor (PDF)
Pam Eaton, Long-Range Planning Division Administrator (PDF)
John Rapacz, ZAED Planning Program Administrator (PDF)
Diego Sanchez-Gomez, ZAED Floodplain Administrator (PDF)
Erin Derrington, Coastal Resources Planner (PDF)
Rowena Dagdag-Andaya, Department of Public Works Director (PDF)

MCM: CIY:EMD:atw

K:WP_DOCS\PLANNING\RFC\2021\0154_WetlandsProtectionRestoration\CARE55_Final.docx