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MEMORANDUM

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TO: Honorable Chairperson Bill "Kaipo" Asing and Members of the Kauai County Council

FROM: Ian K. Costa, Planning Director *IKC* *DD FOR*

VIA: Bernard P. Carvalho Jr., Mayor *BPC*

SUBJECT: Zoning Amendments ZA-2010-3
Amend Articles 1 and 8 of the Comprehensive Zoning Ordinance

DATE: 10/14/2009

OFFICE OF
THE COUNTY CLERK
COUNTY OF KAUAI

The Planning Commission, at its meeting held on April 14th, 2009, voted 6 in favor, one absent, to approve ZA-2010-3 with amendments

Transmitted herewith are the following

1. Proposed ordinance amendments (draft ordinance format)
2. Staff reports covering the amendment requests
3. Transcripts and testimonies from the hearing

Requirements regarding the Council's consideration of the amendments are set forth in Section 8-22 of the Kauai County Code, 1987

COUNTY OF KAUA'I
PLANNING DEPARTMENT
LIHU'E, KAUA'I

STAFF REPORT

DEADLINES:	Application Date	July 28 th , 2009
	Hearing Date	September 8 th , 2009
	Continuations	September 22 nd , 2009
	Action Deadline	November 21 st , 2009

PROJECT: ZA-2010-3 – Bill to amend Sections 8-1.4 and 8-8.5 of the Kauai County Code, respectively, by requiring that parcels with multiple zoning designations be considered individually in applying development standards with the exception that parcels containing 50 acres or more situated within the State Agricultural Land Use District and zoned Open District (O) to be considered cumulatively with the remaining portion of the parcel zoned Agriculture District (A) for the purpose of subdivision, and by imposing standards for density, subdivision and limitations on subdivision similar to those currently applied on lands zoned Agriculture District (A) to lands zoned Open District (O) also situated within the State Agricultural Land Use District.

APPLICANT: County of Kaua'i Planning Commission

AMENDED CONCLUSION AND RECCOMENDATION

In review of the proposed legislation's intent and language with the County Attorney's office staff would recommend the following amendments to ZA-2010-3 for purposed of clarifying methods and applicability.

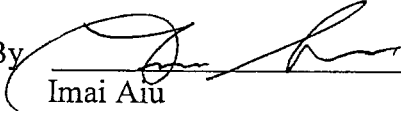
Further Amend Section 8-1.4(d) to read (additional text underlined):

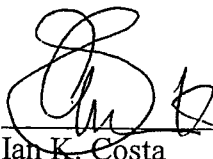

(d) For parcels containing multiple zoning designations each designation shall be considered individually in applying the standards of this Chapter, with the exception that any lot or parcel located in the State Land Use Commission Agricultural District and containing fifty (50) acres or more in the County Open District shall be considered together with the County Agriculture District for the purpose of determining parcel acreage to apply subdivision standards.

Further Amend Section 8-8.5(c)(4) to read (additional text underlined):

(4) "For contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, within an area designated as "Agricultural" by the State Land Use Commission the following standards shall apply. Parcel area shall be calculated in accordance with Section 8-1.4(d)."

A revised copy of the bill is attached.

By 
Imai Aiu
Deputy Director

Approved  
Ian K. Costa
Director

ORDINANCE NO. _____

BILL NO. _____

A BILL FOR AN ORDINANCE TO AMEND CHAPTER 8 OF THE KAUAI COUNTY CODE 1987 "THE COMPREHENSIVE ZONING ORDINANCE"

BE IT ORDAINED BY THE COUNCIL OF THE COUNTY OF KAUAI, STATE OF HAWAII:

SECTION 1. Findings and Purpose:

The intent of this bill is to close the County Open District "density bonus" as discussed in the County General Plan by imposing controls on development of land zoned County Open and Agriculture Districts within the State Land Use Commission Agricultural District, specifically by imposing a density cap and limitations on the subdivisions containing mixed zoning of County Open and Agriculture Districts.

First, the allowable uncapped densities and subdivision standards on the County Open District run counter to the stated intent in the CZO in Chapter 8, Article 8, Section 8-8.1 of the Kauai County Code, which provides, but is not limited to:

- (a) *To preserve, maintain, or improve the essential characteristics of the land and water areas that are:*
 - (1) *of significant value to the public as scenic or recreational resources;*
 - (2) *important to the overall structure and organization of urban areas and which provide accessible and usable open areas for recreational and aesthetic purposes;*
 - (3) *necessary to insulate or buffer the public and places of residence from undesirable environmental factors caused by, or related to, particular uses such as noise, dust, and visually offensive elements.*
- (b) *To preserve, maintain, or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare.*
- (c) *To define and regulate use and development within areas which may be potentially hazardous.*
- (e) *To include areas clearly indicated on the County General Plan or on Zoning maps as "Special Treatment - Open Space" if an applicant represents to government authorities that any properties or areas within a development proposal or subdivision application will remain either permanent open space or private park areas, or if the Council in the exercise of its zoning power requires as a condition of rezoning that an area be designated for permanent open space or private park. This does not preclude the Council from exercising its zoning authority as provided in Sec. 46-4, Hawai'i Revised Statutes. Within areas so designated, no uses, structures, or development inconsistent with such designation shall be generally permitted or permitted by use permit without*

express provision to the contrary. The Council is hereby authorized to make such factual determinations as necessary incident to this section.

(f) To provide for other areas which because of more detailed analysis, or because of changing settlement characteristics, are determined to be of significant value to the public."

Second, the County General Plan in several sections under the Chapter "Preserving Kaua'i's Rural Character" calls for changes to the CZO to deal with development sprawl on County Open and Agriculture Districts. In particular Section 5.3.2.2 "Residential 'Density Bonus' Provided via the Open Zoning Regulations" states:

"The most important conflict between the policy and the administration of the zoning regulations relates to the incorporation of Open-zoned lands in subdivisions of Agriculture land. Subdivision in the Open district is not limited by a sliding scale, as in the Agriculture district. The prevailing practice, which resulted from a court decision against the County, is to add the number of lots that could be created under Open zoning to the number that could be created under Agriculture zoning.

The approved plan for the Waipake subdivision, for example, allowed 20 lots based on 226 acres of Agriculture-zoned land and an additional 15 lots based on 78 acres of Open-zoned land (The Open-zoned lands at Waipake lie in a stream gulch.) With multiple houses per lot allowed under Agriculture zoning (ownership subdivided through CPR), the subdivision plan allowed the development of a total of 125 houses. In some cases, Open-zoned lands have increased the total number of new agricultural lots by 100 percent or more.

There is general agreement that this "density bonus" for Open lands contradicts the intent of the Open district and of the Agriculture district development standards. To correct this situation, it is recommended that the CZO be amended so that Open-zoned lands within Agriculture-zoned properties are treated as "Agriculture" for purposes of determining the allowable number of residential lots. Counting all acreage as Agriculture gives the benefit of the additional land to the owner while observing the intent of the Agriculture district's density limitations."

The County General Plan goes on to recommend implementing actions and options to deal with the County Open District "density bonus":

"(a) The Planning Department shall prepare amendments to the Comprehensive Zoning Ordinance (CZO) to eliminate the use of Open lands to increase residential density in the development of subdivisions. Amendments shall be submitted to the Planning Commission and the County Council for adoption."

"Applying the subdivision standards for Agriculture to the combined acreage of Agriculture- and Open-zoned land within the parcel(s) to be subdivided."

Third, the public has voiced concerns and has made numerous references to problems and inconsistencies in the regulation of County Open Districts, particularly the proliferation of exclusive and gated residential communities which in nature runs counter to the stated purpose of the County Open District.

Fourth, the proliferation of agricultural subdivisions has led to development in lands never intended for such residential uses which are not in connection to a farming operation, all of which overtaxes the County's infrastructure with regard to roads, water, wastewater and other services and carries a higher unit cost to service.

Fifth, the County Council believes that the preservation and protection of open areas are of sufficient concern to merit legislation that prevents development and subdivision of County Open Districts at densities inappropriate to the stated purposes of the County Open Districts in the CZO and land management goals set forth in the County General Plan.

SECTION 2. The Section 8-1.4 of the Kaua'i County Code is amended to read:

Sec. 8-1.4 Application of Regulations.

(a) For the purposes of this Chapter, the County of Kauai shall include the districts of Waimea, Koloa, Lihue, Kawaihau and Hanalei as described in Section 4-1(4), H.R.S.

(b) Unless otherwise expressly prohibited by law, the provisions of this Chapter shall apply to all areas within the County boundaries.

(c) In administering and applying the provisions of this Chapter, unless otherwise stated, they shall be held to be the minimum requirements necessary to accomplish the purpose of this Chapter.

(d) For parcels containing multiple zoning designations each designation shall be considered individually in applying the standards of this Chapter, with the exception that any lot or parcel located in the State Land Use Commission Agricultural District and containing fifty (50) acres or more in the County Open District shall be considered together with the County Agriculture District for the purpose of determining parcel acreage to apply subdivision standards.

(e[d]) Nothing in this Chapter shall regulate the placement, design and construction of utility poles, towers and transmission lines by a public utility company as defined in Section 269-1, H.R.S., provided, that the poles and towers shall be no higher than twenty (20) feet above the height limits for structures applicable in the Use District in which the poles and towers are constructed.

(f[e]) Nothing in this Chapter shall regulate the minimum size of lots in a subdivision which are to be used for government or public utility facilities. The creation of such lots shall be in compliance with the provisions of Chapter 9, County Subdivision Ordinance, of the Code.

(g[f]) Nothing in this Chapter shall prohibit the use of factory built housing or trailer homes as permitted dwellings, buildings or structures for the purpose of human habitation or occupancy within the various Use Districts provided that all such factory built housing and trailer homes must first:

- (1) Meet all applicable development standards, density limitation and other such requirements for the particular Use District;
- (2) Be permanently affixed to the ground;
- (3) Have had their wheels and axles, if any, removed;

(4) If licensed pursuant to Hawaii Revised Statutes Chapter 249, have been registered as a stored vehicle in accordance with Hawaii Revised Statutes Section 249-5;

(5) Meet the standards, and requirements contained in Section 12-4.4 of Chapter 12, Building Code; and

(6) Meet all other applicable governmental rules, regulations, ordinances, statutes and laws.

(h[g]) Recreational trailers may be used as temporary dwellings for travel, recreational or vacation purposes in accordance with chapter 16 (Recreational Trailer Camps) of Title 11, Administrative Rules, Department of Health, State of Hawaii, or any other State or County laws, ordinances or rules relating to the use of public or private "lands, parks or camp grounds for camping or recreational purposes. Except as provided herein, no recreational trailer shall be used as a dwelling or building for the purpose of human habitation or occupancy. (Ord. No. 164, August 17, 1972; Sec. 8-1.4, R 1976; Ord. No. 443, December 28, 1982; Ord. No. 484, February 18, 1986).

SECTION 3. The Section 8-8.5 of the Kaua'i County Code is amended to read:

Sec. 8-8.5 Development Standards For Construction And Use Within An Open District.

(a) Land Coverage:

(1) The amount of land coverage created, including buildings and pavement, shall not exceed ten percent (10%) of the lot or parcel area.

(2) No existing structure, use or improvement shall be increased in size, or any new structure, use or improvement undertaken so as to exceed the ten percent (10%) land coverage limitation.

(3) At least three thousand (3,000) square feet of land coverage shall be permissible on any parcel of record existing prior to or on September 1, 1972,

(b) Residential Densities.

(1) Except as other wise provided in this Article, no more than one (1) single family detached dwelling unit per three (3) acres of land shall be permitted when the parcel is located within an area designated "Urban" or "Rural" by the State Land Use Commission.

(2) ~~and~~ No more than one (1) single family detached farm dwelling unit per five (5) acres of land shall be permitted when the parcel is located within an area designated as "Agricultural" by the State Land Use Commission, ~~provided that the provisions of this Article shall not prohibit the construction or maintenance of one (1) single family detached dwelling with necessary associated land coverage on any legal parcel or lot existing prior to or on September 1, 1972 and provided that no more than five (5) dwelling units may be developed on any one parcel.~~

(1)(3) Where the parcel is located within an area designated "Urban" by the State Land Use Commission, one (1) single family detached dwelling unit per one (1) acre of land shall be permissible if the existing average slope of the parcel is no greater than ten percent (10%).

(4) Provided that the provisions of this Article shall not prohibit the construction or maintenance of one (1) single family detached dwelling with necessary associated land coverage on any legal parcel or lot existing prior to or on September 1, 1972.

(5) Existing Structures, Permits and Condominium Property Regimes (CPRs).

(A) Any lot of record which has a valid zoning permit(s) for more than five (5) units prior to the effective date of this ordinance shall be allowed to build to the density for which there are permits.

(B) Any lot of record which has recorded a final Condominium Property Regime prior to the effective date of this ordinance shall be allowed to build to the density in place at the time of the of approval of the CPR by the Real Estate Commission.

(C) Any dwelling unit constructed under these provisions or lawfully existing prior to the adoption of this ordinance may be replaced, expanded, altered or enlarged in accordance with all other applicable provisions of this Chapter.

(c) Subdivision.

(1) No parcel or lot shall be created which is less than three (3) acres in size within an area designated as "Urban" or "Rural" by the State Land Use Commission, ~~or less than five (5) acres in size within an area designated as "Agriculture" by the State Land Use Commission,~~ except within an "Urban" area a lot or parcel may be created which is one (1) acre or more in size if the existing average slope of the lot or parcel thus created is no greater than ten percent (10%).

(2) No parcel or lot shall be subdivided when the improvements on the parcel meet or exceed the density and land coverage requirement of this Article except when the subdivision creates parcels in conformance with this Article.

(3) No portion of any parcel previously used as the basis for the calculation of allowable density or subdivision in any other District shall subsequently be subdivided or used as the basis for any other density or land coverage calculation.

(4) "For contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, within an area designated as "Agricultural" by the State Land Use Commission the following standards shall apply. Parcel area shall be calculated in accordance with Section 8-1.4(d):"

(A) Parcels not more than fifty (50) acres, may be subdivided into parcels not less than five (5) acres in size.

(B) Parcels larger than fifty (50) acres, but not more than three hundred (300) acres may be subdivided into ten (10) or fewer parcels, none of which may be smaller than five (5) acres.

(C) Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

(i) A maximum of seventy-five (75) acres may be subdivided into not more than ten (10) parcels, none of which shall be smaller than five (5) acres.

(ii) An additional twenty percent (20%) of the total parcel area or three hundred (300) acres, whichever is less, may be subdivided into parcels, none of which shall be smaller than twenty—five (25) acres.

(iii) The balance of the parcel area shall not be subdivided.

(5) Standards for Subdivision on State Land Use District Agricultural.

(A) Any subdivision on land in State Land Use Commission Agricultural District shall be consistent with the provisions of H.R.S. Chapter 205 and Article 7 of Chapter 8 of Title IV of the Kaua'i County Code.

(d) Development Standards. Subject to the density and subdivision restrictions in Sec. 8-8.5(c), the development requirements for use development or subdivision within an Open District shall be:

(1) The same as the requirements for the District in which the proposed use would be permitted under other provisions of this Chapter.

(2) The same as the requirements of Secs. 8-3.6 and 8-3.7 of the Residential District if no use is indicated or if the use proposed is not readily assignable to any other Use District.

(3) Public Access. The Planning Commission may require the dedication of adequate public access-ways not less than ten (10) feet in width to publicly owned land or waters and may require the preservation of all historic and archeological sites, known or discovered on the parcel subject to development. (Ord. No. 164, August 17, 1972; Sec. 8-8.5, R.C.O. 1976).

SECTION 4. Severability.

If any provision of this ordinance or the application thereof to any person, persons, or circumstances is held invalid, the invalidity does not affect the other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end, the provisions of this ordinance are severable.

SECTION 5. Ordinance material to be repealed is bracketed.

SECTION 6. This ordinance shall take effect upon its approval.

COUNTY OF KAUA'I
PLANNING DEPARTMENT
LIHU'E, KAUA'I

STAFF REPORT

DEADLINES:	Application Date	July 28 th , 2009
	Hearing Date	September 8 th , 2009
	Continuations	September 22 nd , 2009
	Action Deadline	60 days after close of public hearing

PROJECT: ZA-2010-3 – Bill to amend Sections 8-1.4 and 8-8.5 of the Kauai County Code, respectively, by requiring that parcels with multiple zoning designations be considered individually in applying development standards with the exception that parcels containing 50 acres or more situated within the State Agricultural Land Use District and zoned Open District (O) to be considered cumulatively with the remaining portion of the parcel zoned Agriculture District (A) for the purpose of subdivision, and by imposing standards for density, subdivision and limitations on subdivision similar to those currently applied on lands zoned Agriculture District (A) to lands zoned Open District (O) also situated within the State Agricultural Land Use District.

APPLICANT: County of Kaua'i Planning Commission

ADDITIONAL FINDINGS

At the September 8th meeting the Commission asked for the following information.

Densities and associated issues with other Counties' Open Zoning Districts or equivalent - Relevant excerpts from the Hawai'i and City and County of Honolulu codes are attached.

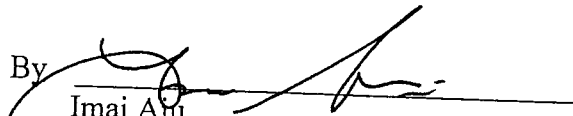
Parcels affected by the proposed legislation. An abstract of data gathered by the County GIS follows. It should be noted that the data used is taken from preliminary GIS maps and cannot be construed to be 100% accurate or be considered an endorsement of any zoning or entitlements. The data however can be used to give an overall picture of the State Land Use Agricultural District and County Open Zoning Districts and a general understanding of the number of parcels this bill will affect.

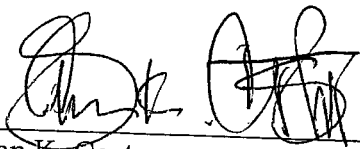
Roughly 166 parcels ranging in size from 30 to 23,000+ acres contain enough Open Zone land to be affected by this legislation. The total acreage of all the possible affected parcels is between 146,000 – 155,000 acres; the amount of Open Zoning District lands within this acreage is roughly 50,000 acres. Of the 166 parcels roughly 44 are owned by a Federal, State or County Government agency. Those 44 parcels total roughly 56,000 acres and contain roughly 21,000 acres of Open Zone land.

A map showing the affected zonings is attached.

E.I.A.I.

SEP 22 2009

By 
Imai Atu
Deputy Director

Approved 
Ian K. Costa
Director

Hawai'i County Code
Division 16. O, Open Districts.

Section 25-5-160. Purpose and applicability.

The O (open) district applies to areas that contribute to the general welfare, the full enjoyment, or the economic well-being of open land type use which has been established, or is proposed. The object of this district is to encourage development around it such as a golf course and park, and to protect investments which have been or shall be made in reliance upon the retention of such open type use, to buffer an otherwise incompatible land use or district, to preserve a valuable scenic vista or an area of special historical significance, or to protect and preserve submerged land, fishing ponds, and lakes (natural or artificial tide lands).

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-5-161. Designation of O districts.

Each O (open) district shall be designated by the symbol "O."

(1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-5-162. Permitted uses.

(a) The following uses shall be permitted in the O district:

- (1) Aquaculture activities and facilities.
- (2) Cemeteries and mausoleums, as permitted under chapter 6, article 1 of this Code.
- (3) Community buildings, as permitted under section 25-4-11.
- (4) Existing churches and temples of historical significance.
- (5) Forestry.
- (6) Game preserves.
- (7) Growing of plants provided such growth does not impair a view intended to be preserved in the O district.
- (8) Heiaus, historical areas, structures, and monuments.
- (9) Natural features, phenomena, and vistas as tourist attractions.
- (10) Private recreational uses involving no aboveground structure except dressing rooms and comfort stations.
- (11) Public parks.
- (12) Public uses and structures, as permitted under section 25-4-11.
- (13) Telecommunication antennas, as permitted under section 25-4-12.
- (14) Utility substations, as permitted under section 25-4-11.

(b) In addition to those uses permitted under subsection (a) above, the following uses may be permitted in the O district, provided that a use permit is issued for each use:

- (1) Crematoriums.
- (2) Golf courses.
- (3) Yacht harbors and boating facilities; provided that the use, in its entirety, is compatible with the stated purpose of the O district.

(c) Uses considered directly accessory to the uses permitted in this section shall also be permitted in the O district. (1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-5-163. Height limit.

There shall be no height limit in the O district, except as specified as a condition of approval attached to any use permit or plan approval. For this purpose, the height limit in the adjoining districts shall be used as guides. (1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-5-164. Minimum building site area.

There shall be no minimum building site area in the O district, except as a condition of approval attached to any plan approval. For this purpose, the minimum building site area regulations in the adjoining districts shall be used as guides. (1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-5-165. Minimum building site average width.

There shall be no minimum building site average width in the O district, except as specified as a condition of approval attached to any plan approval. For this purpose the minimum building site average width regulations in the adjoining districts shall be used as guides. (1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-5-166. Minimum yards.

There shall be no minimum yards in the O district, except as specified as a condition of approval attached to any plan approval. For this purpose, the minimum yard regulations in the adjoining districts shall be used as guides. (1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Section 25-5-167. Other regulations.

Plan approval shall be required for all new structures and additions to existing structures in the O district. (1996, Ord. No. 96-160, sec. 2; ratified April 6, 1999.)

Land Use Ordinance – City and County of Honolulu

Sec. 21-3.40 Preservation districts--Purpose and intent.

- (a) The purpose of the preservation districts is to preserve and manage major open space and recreation lands and lands of scenic and other natural resource value.
- (b) It is intended that all lands within a state-designated conservation district be zoned P-1 restricted preservation district.
- (c) The purpose of creating the F-1 military and federal preservation district is to identify areas in military or federal government use and to permit the full range of military or federal government activities.
- (d) Should lands be removed from either the state-designated conservation district or from federal jurisdiction, all uses, structures and development standards shall be as specified for the P-2 general preservation district.
- (e) It is also the intent that lands designated urban by the state, but well-suited to the functions of providing visual relief and contrast to the city's built environment or serving as outdoor space for the public's use and enjoyment be zoned P-2 general preservation district. Areas unsuitable for other uses because of topographical considerations related to public health, safety and welfare concerns shall also be placed in this district. (Added by Ord. 99-12)

Sec. 21-3.40-1 Preservation uses and development standards.

- (a) Within the P-1 restricted preservation district, all uses, structures and development standards shall be governed by the appropriate state agencies.
 - (b) Within an F-1 military and federal preservation district, all military and federal uses and structures shall be permitted.
 - (c) Within the P-2 general preservation district, permitted uses and structures shall be as enumerated in Table 21-3.
 - (d) Within the P-2 general preservation district, development standards shall be as enumerated in Table 21-3.1.
 - (e) Additional Development Standards.
 - (1) Height. The maximum height may be increased from 15 to 25 feet if height setbacks are provided.
 - (2) Height Setbacks. Any portion of a structure exceeding 15 feet shall be set back from every side and rear buildable area boundary line one foot for each two feet of additional height above 15 feet (see Figure 21-3.1).
- (Added by Ord. 99-12)

COUNTY OPEN AND STATE LAND USE AGRICULTURE ZONINGS

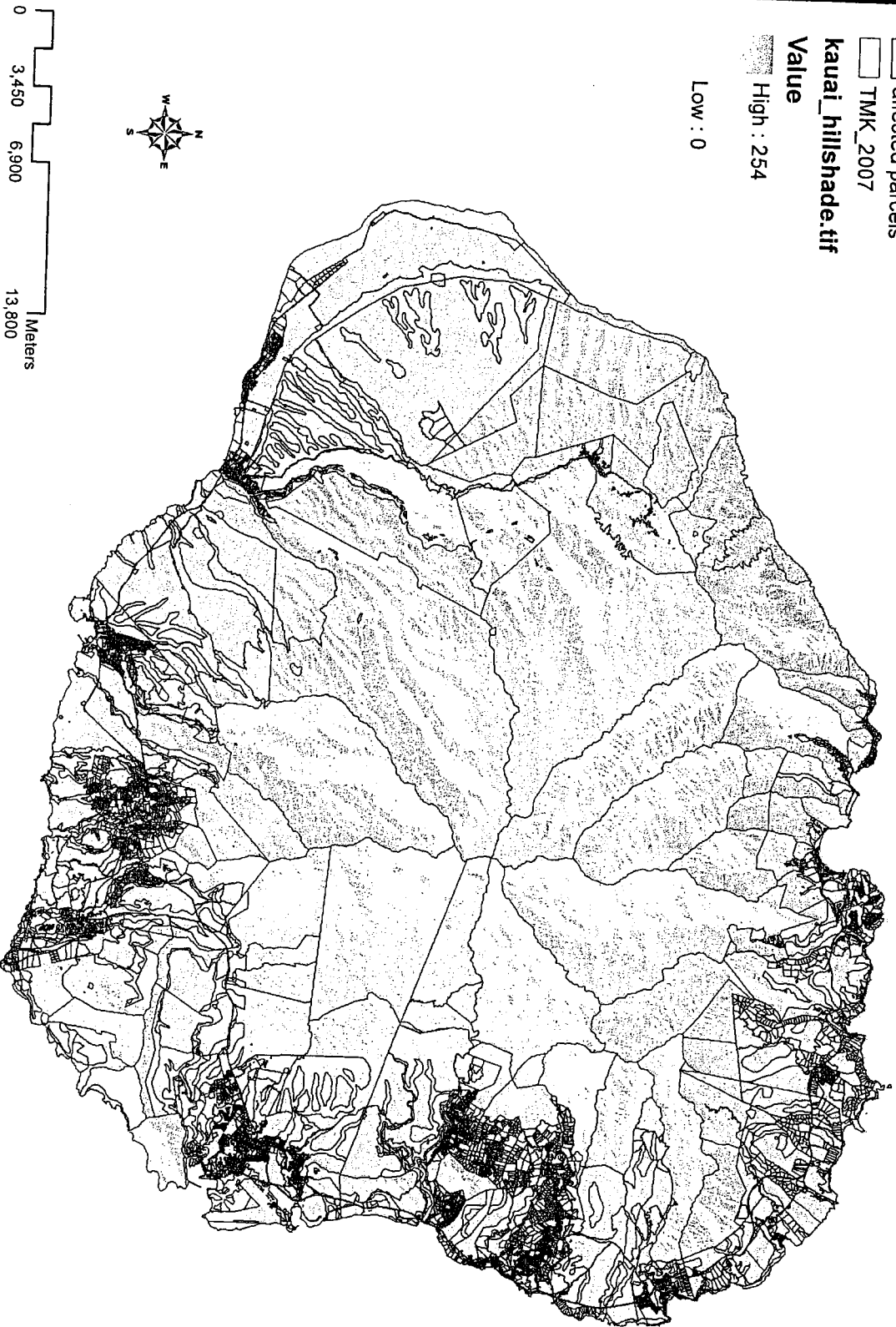
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- affected parcels
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Value

High : 254

Low : 0



UNOFFICIAL DATA - FOR INFORMATIONAL PURPOSES ONLY

COUNTY OF KAUAI
PLANNING DEPARTMENT
LIHU'E, KAUAI

SUBJECT: ZONING

STAFF REPORT

DEADLINES: Application Date July 28th, 2009
Hearing Date September 8th, 2009
Continuations
Action Deadline 60 days after close of public hearing

PROJECT: ZA-2010-3 – Bill to amend Sections 8-1.4 and 8-8.5 of the Kauai County Code, respectively, by requiring that parcels with multiple zoning designations be considered individually in applying development standards with the exception that parcels containing 50 acres or more situated within the State Agricultural Land Use District and zoned Open District (O) to be considered cumulatively with the remaining portion of the parcel zoned Agriculture District (A) for the purpose of subdivision, and by imposing standards for density, subdivision and limitations on subdivision similar to those currently applied on lands zoned Agriculture District (A) to lands zoned Open District (O) also situated within the State Agricultural Land Use District.

APPLICANT: County of Kaua'i Planning Commission

FINDINGS

BACKGROUND AND HISTORY

At the inception of the Comprehensive Zoning Ordinance standards for density and subdivision in the Open and Agriculture Districts were instituted.

The density standards for the Agricultural District from Section 8-7.1 are as follows:

Permitted residential densities shall be calculated as follows:

- (1) One (1) dwelling unit for each parcel one (1) acre or larger.
- (2) One (1) additional dwelling unit for each additional three (3) acres in the same parcel, provided that no more than five (5) dwelling units may be developed on any one (1) parcel.
- (3) A parcel or contiguous parcels in common ownership of record existing prior to or on September 1, 1972, which is smaller than one (1) acre, may develop one (1) dwelling unit. (Ord. No. 164, August 17, 1972; Sec. 8-7.5, R.C.O. 1976)

E.2.b.1

SEP 08 2009

The density standards for the Open District from Section 8-8.5 are as follows:

(a) *Residential Densities. Except as otherwise provided in this Article, no more than one (1) single family detached dwelling unit per three (3) acres of land shall be permitted when the parcel is located within an area designated "Urban" or "Rural" by the State Land Use Commission, and no more than one (1) single family detached dwelling unit per five (5) acres of land shall be permitted when the parcel is located within an area designated as "Agriculture" by the State Land Use Commission, provided that the provisions of this Article shall not prohibit the construction or maintenance of one (1) single family detached dwelling with necessary associated land coverage on any legal parcel or lot existing prior to or on September 1, 1972.*

The Open Zone carries different standards for lands within the State Land Use Urban and Rural districts however this bill does not address those lands.

The subdivision standards for the Agricultural District from Section 8-7.4 are as follows

(4) *Contiguous lots or parcels of record in common ownership existing prior to or on September 1, 1972, no larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:*

(A) *Parcels not more than ten (10) acres may be subdivided into parcels not less than one (1) acre in size.*

(B) *Parcels larger than ten (10) acres, but not more than twenty (20) acres, may be subdivided into parcels not less than two (2) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.*

(C) *Parcels larger than twenty (20) acres, but not more than thirty (30) acres, may be subdivided into parcels not less than three (3) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.*

(D) *Parcels larger than thirty (30) acres, but not more than fifty (50) acres, may be subdivided into parcels not less than five (5) acres in size.*

(E) *Parcels larger than fifty (50) acres, but not more than three hundred (300) acres may be subdivided into ten (10) or fewer parcels, none of which may be smaller than five (5) acres.*

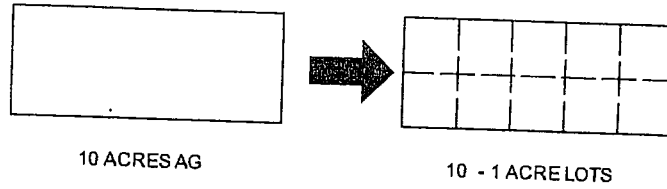
(5) *Contiguous lots or parcels of record in common ownership existing to or on September 1, 1972, larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:*

(A) *A maximum of seventy-five (75) acres may be subdivided into not more than ten (10) parcels, none of which shall be smaller than five (5) acres.*

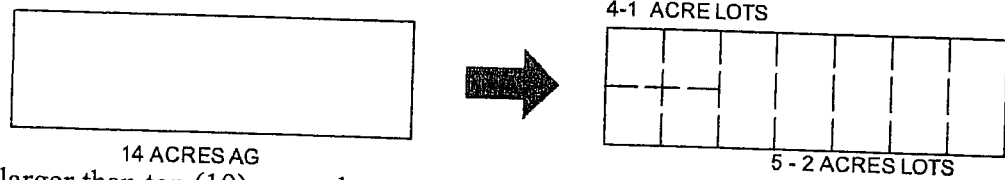
(B) *An additional twenty percent (20%) of the total parcel area or three hundred (300) acres, whichever is less, may be subdivided into parcels, none of which shall be smaller than twenty-five (25) acres.*

(C) *The balance of the parcel area, shall not be subdivided.*

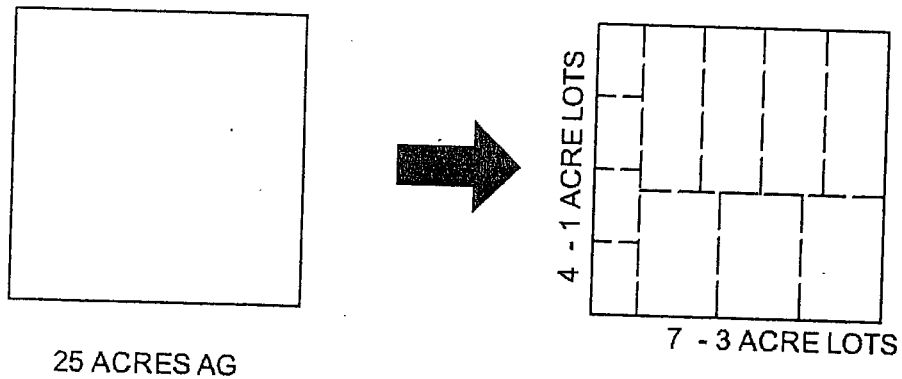
Graphically these standards are:



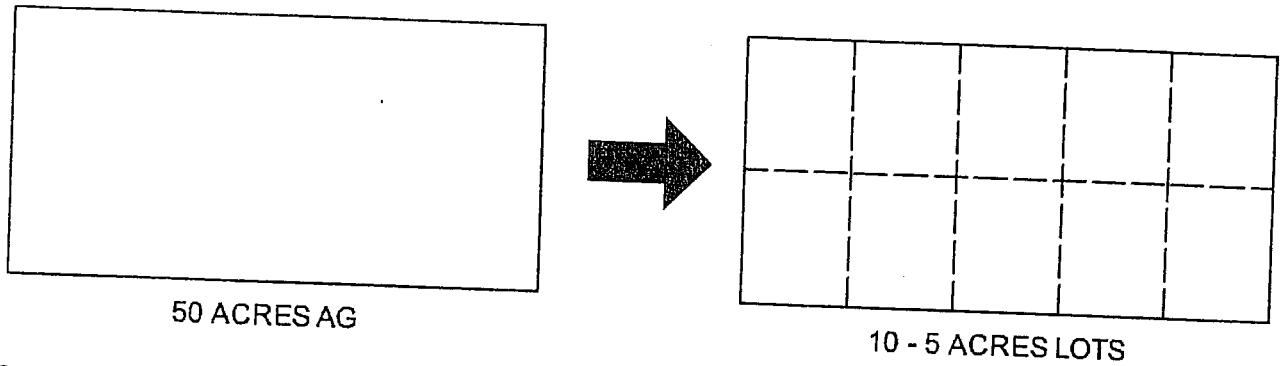
Parcels not more than ten (10) acres may be subdivided into parcels not less than one (1) acre in size.



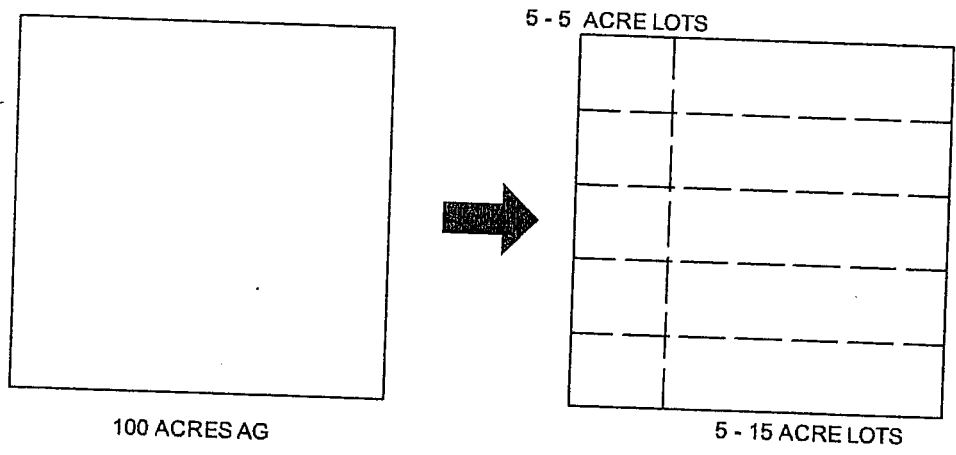
Parcels larger than ten (10) acres, but not more than twenty (20) acres, may be subdivided into parcels not less than two (2) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.



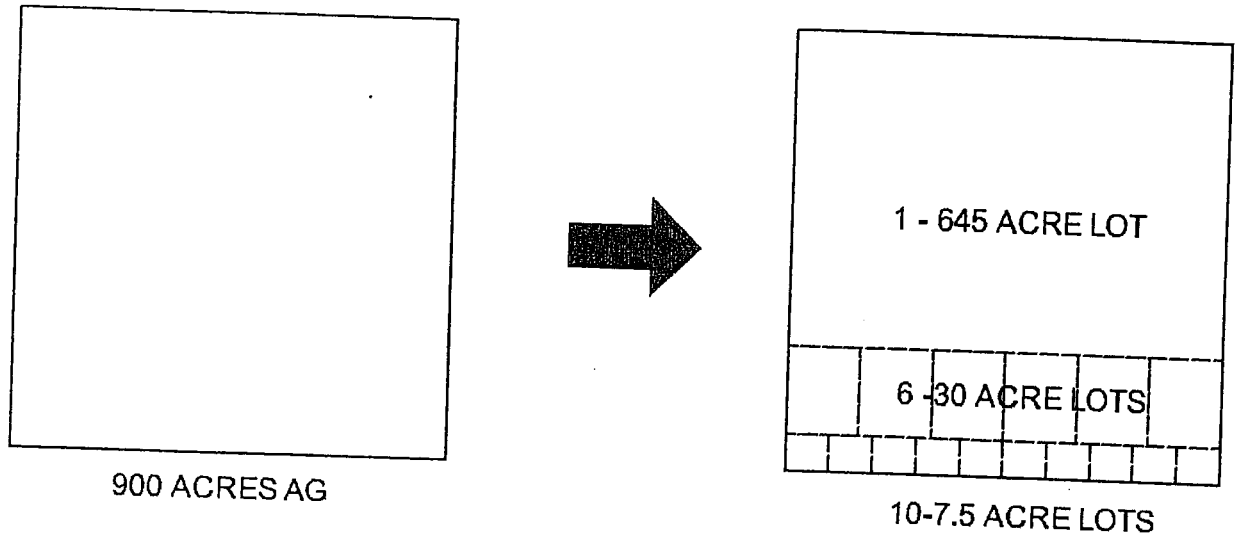
Parcels larger than twenty (20) acres, but not more than thirty (30) acres, may be subdivided into parcels not less than three (3) acres in size, except that not more than four (4) lots in the parcel may be one (1) acre in size.



Parcels larger than thirty (30) acres, but not more than fifty (50) acres, may be subdivided into parcels not less than five (5) acres in size.



Parcels larger than fifty (50) acres, but not more than three hundred (300) acres may be subdivided into ten (10) or fewer parcels, none of which may be smaller than five (5) acres.



Contiguous lots or parcels of record in common ownership existing to or on September 1, 1972, larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:

- (D) A maximum of seventy-five (75) acres may be subdivided into not more than ten (10) parcels, none of which shall be smaller than five (5) acres.
- (E) An additional twenty percent (20%) of the total parcel area or three hundred (300) acres, whichever is less, may be subdivided into parcels, none of which shall be smaller than twenty-five (25) acres.
- (F) The balance of the parcel area, shall not be subdivided.

The standards of Section 8-7.4 establish a "sliding scale" dependent on lot size with the following purposes

- "To limit, retard and control subdivision of agriculture land that will destroy agriculture stability and potential.
- To avoid the dissipation of agriculture lands by excessive or premature parceling for other than agriculture uses.
- To establish and maintain a proportionate mix of parcel sizes to accommodate optimum sizes for existing or potential agricultural uses.
- To establish a relationship between the size of the parcel to be subdivided and the size of the smaller parcels created by the subdivision, in order to maintain large parcels for agricultural uses and activities best carried out on large parcels and to maintain and provide smaller parcels of various sizes for agricultural uses that can, be carried out most efficiently on smaller parcels."

The subdivision standards for the Open District from Section 8-8.5(c) are as follows:

- (1) "No parcel or lot shall be created which is less than three (3) acres in size within an area designated as 'Urban' or 'Rural' by the State Land Use Commission, or

less than five (5) acres in size within an area designated as 'Agriculture' by the State Land Use Commission, except within an 'Urban' area a lot or parcel may be created which is one (1) acre or more in size if the existing average slope of the lot or parcel thus created is no greater than ten per cent (10%)."

PRELIMINARY EVALUATION

The bill seeks to "close the County Open District 'density bonus' as discussed in the County General Plan by imposing controls on development of land zoned County Open and Agriculture Districts." The bill would do this by capping the density of lands within the County Open Zoning District and State Land Use Agriculture District and by implementing a "sliding scale" on subdivision of Open Zoning District Lands within the State Land Use Agriculture District similar to that of the County Agriculture Zoning District.

Affected Areas

The State of Hawai'i is unique from the rest of the United States in that there is a "two-tiered" land use classification system in place. There are Land Use District designations at the State level, and there are Zoning District designations at the County level.

The four State Land Use Districts are Urban, Rural, Agricultural, and Conservation. With the exception of the State Conservation Land Use District, the Counties exercise their land use authority over the remaining districts. Due to the two-tiered land use classification system, it has created various development standards and residential density calculations for all parcels. For example, a parcel that is situated within the State Agricultural Land Use District and County Open Zoning District would be permitted one (1) dwelling unit per 5 acres of land, whereas a parcel that is situated within the State Urban or Rural Land Use District and County Open District would be permitted one (1) dwelling unit per 3 acres of land.

The proposed bill only imposes new standards on lands that are within the County Open Zoning District and State Agricultural Land Use District. Lands within the County Open Zoning District and State Urban or Rural Land Use Districts would be unaffected by the proposed legislation.

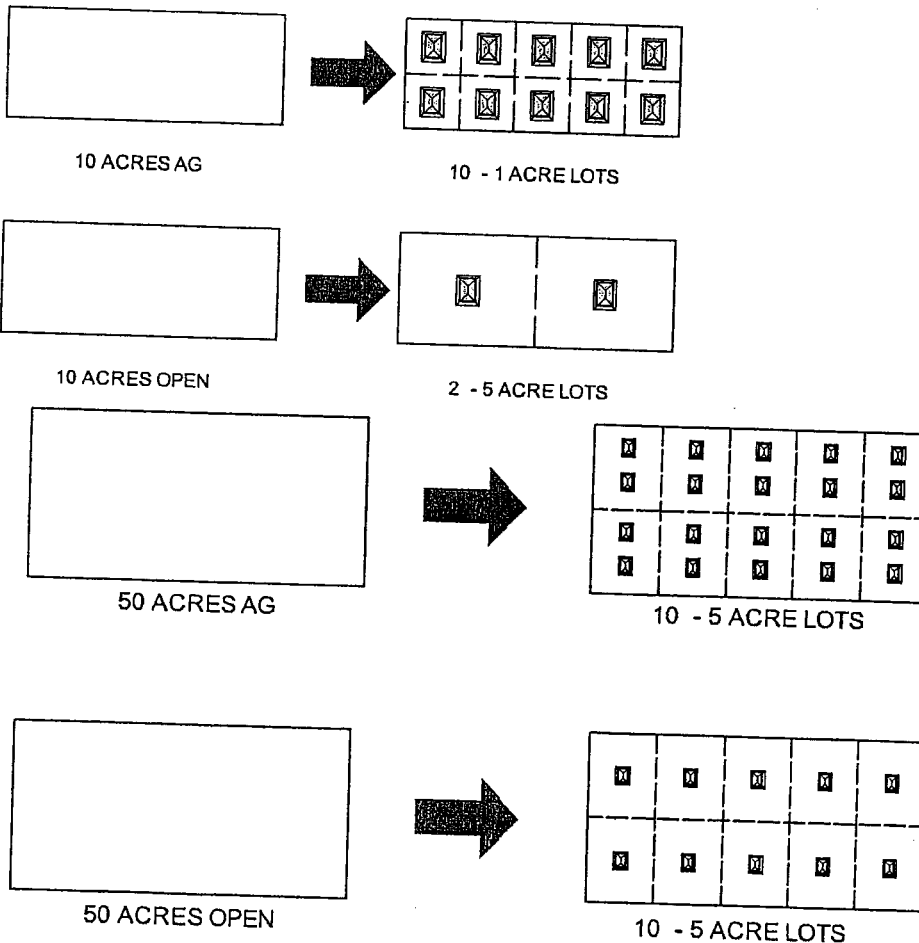
The Open Zoning Density Bonus

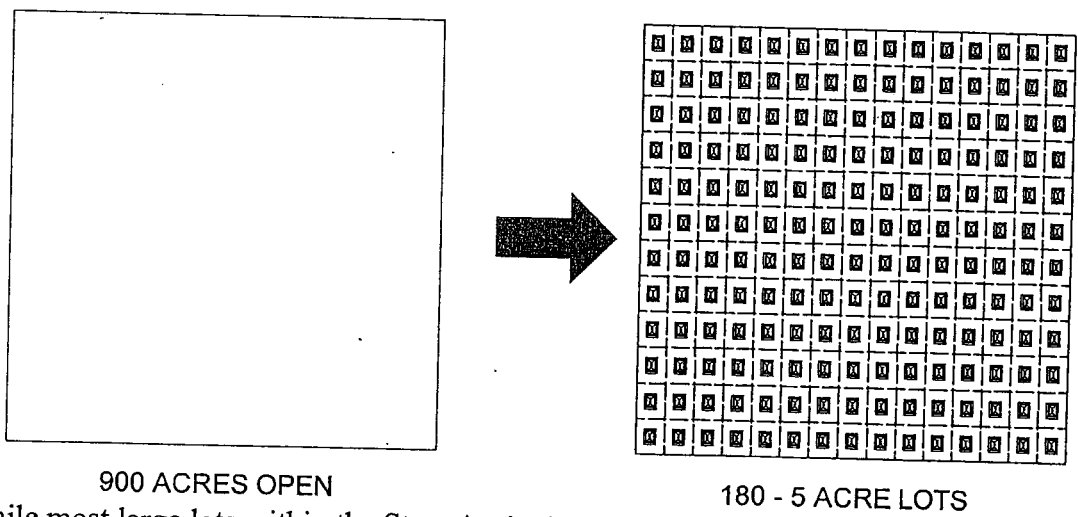
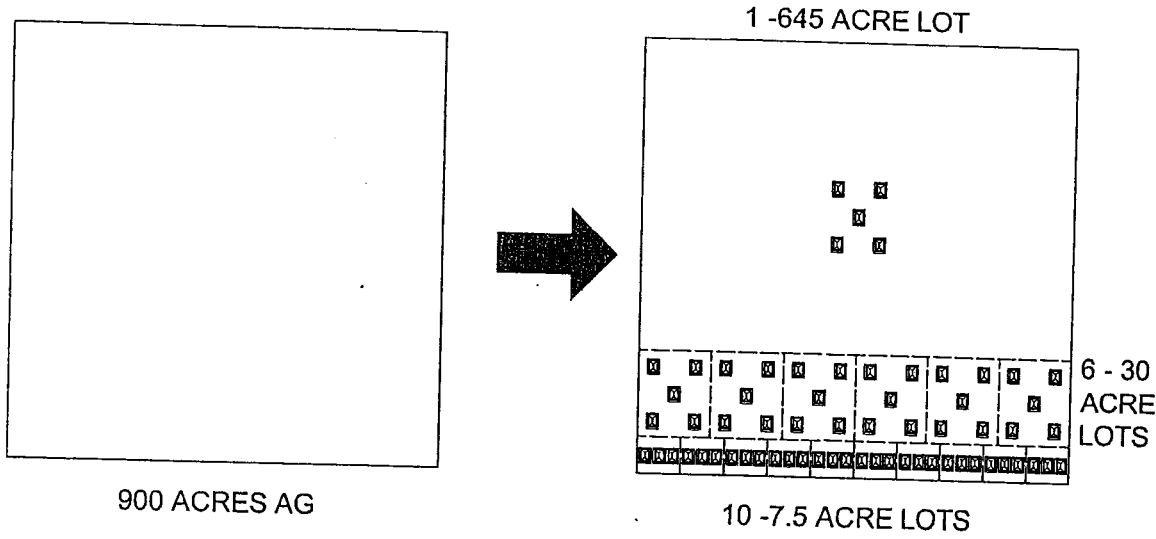
The bill proposes to correct the "Open Density Bonus" identified by the County General Plan. Many large lots formerly used for agriculture consist of a mixture of both County Open and Agriculture Zoning Districts, and are situated within the State Agricultural Land Use District. Prior to analyzing the bills' proposed amendments, it is noteworthy to compare the present standards of the Open and Agriculture zoning districts, relative to residential density and subdivision, as permitted by Chapter 8 of the Kaua'i County Code. The information noted below is an example of the density bonus of the Open zoning district:

<u>Lot Size</u>	<u>Open Zone Density</u>	<u>Agriculture Zone Density</u>
1 Acre -----	0 units -----	1 Unit
4 Acres -----	0 units -----	2 Units
7 Acres -----	1 Units -----	3 Units
10 Acres -----	2 Units -----	4 Units
13 Acres -----	2 Units -----	5 Units
25 Acres -----	5 Units -----	5 Units
100 Acres -----	20 Units -----	5 Units

As you can see, the Agriculture zoning district grants more density at smaller acreages but it becomes much more restrictive than the Open zoning district for larger acreages. In further analyzing the foregoing data, it is noted that the effective residential units per acre are the same for each zoning district when it involves a 25-acre lot. Thus, the overall area of 25 acres may be viewed as the "threshold". Additionally, a similar dynamic exists when the subdivision standards of the Open zoning district is compared with the standards of the Agriculture zoning district.

A similar dynamic exists when the subdivision standards of the Open Zone are compared with the standards of the Agricultural Zone.





While most large lots within the State Agricultural Land Use District consist of a mixture of County Open and Agriculture zoning districts, the present application of the CZO would allow the bifurcation of the development standards to each zoning district. It would reveal that the present standards of the Open District would yield a higher residential density than the Agriculture District. The Open District allows greater residential densities and lots through subdivision as the lot becomes larger, and this is what constitutes the “Open Density Bonus”. This has been the enabling mechanism for much of the larger agricultural subdivisions, which has resulted in subsequent sprawl.

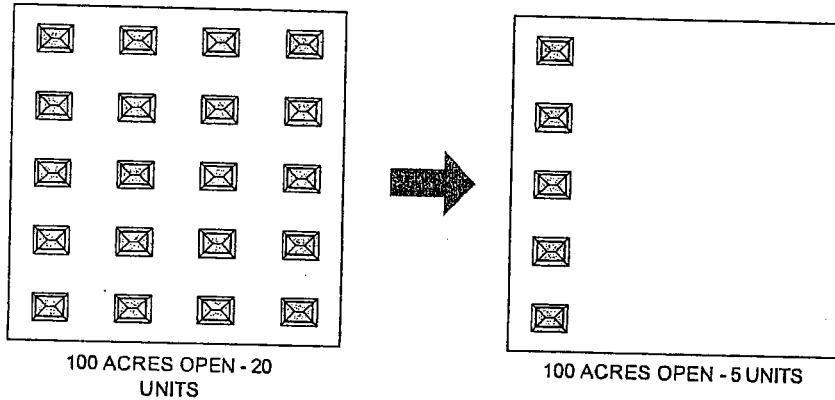
Based on these reasons, the proposed legislation attempts to address the density bonus by accomplishing the following:

Density Cap

The bill proposes to add the following language to Section 8-8.5(2) “and provided that no more

than five (5) dwelling units may be developed on any one parcel,” and separate the density standards for lands within the County Open District and State Land Use Agriculture District versus those lands within the County Open District and State Land Use Rural or Urban Districts.

The cap would effect the following change to an Open Zone lot of 100 acres.



Comparative densities would be as follows:

<u>Lot Size</u>	<u>Open Zone Density</u>	<u>Agriculture Zone Density</u>
1 Acre -----	0 units -----	1 Unit
4 Acres -----	0 units -----	2 Units
7 Acres -----	1 Units -----	3 Units
10 Acres -----	2 Units -----	4 Units
13 Acres -----	2 Units -----	5 Units
25 Acres -----	5 Units -----	5 Units
100 Acres -----	5 Units -----	5 Units

The implementation of a density cap would make the Open District more restrictive than the Agriculture District as it would take 25 acres to achieve 5 units where only 13 acres is needed in the Agriculture District. Furthermore, the bill would not affect lots under 30 acres in size as they do not qualify for more than 5 units under current law.

The bill does also propose exceptions for properties which have already have valid zoning permits and those which have executed a valid CPR and does allow those structures and existing structures to be replaced, altered and enlarged.

Subdivision Sliding Scale

The bill proposes the following additions to Section 8-8.5(c)4

(4) *“For parcels within an area designated as “Agricultural” by the State Land Use Commission the following standards shall apply. Parcel area shall be calculated in accordance with Section 8-1.4(d):*

(A) *Parcels not more than fifty (50) acres, may be subdivided into parcels not less than five (5) acres in size.*

(B) *Parcels larger than fifty (50) acres, but not more than three hundred (300) acres may be subdivided into ten (10) or fewer parcels, none of which may be smaller than five (5) acres.*

(C) *Contiguous lots or parcels of record in common ownership existing to or on September 1, 1972, larger than three hundred (300) acres may be subdivided only in accordance with the following criteria:*

(i) *A maximum of seventy-five (75) acres may be subdivided into not more than ten (10) parcels, none of which shall be smaller than five (5) acres.*

(ii) *An additional twenty percent (20%) of the total parcel area or three hundred (300) acres, whichever is less, may be subdivided into parcels, none of which shall be smaller than twenty-five (25) acres.*

(iii) *The balance of the parcel area shall not be subdivided.*

(5) *Standards for Subdivision on State Land Use District Agricultural.*

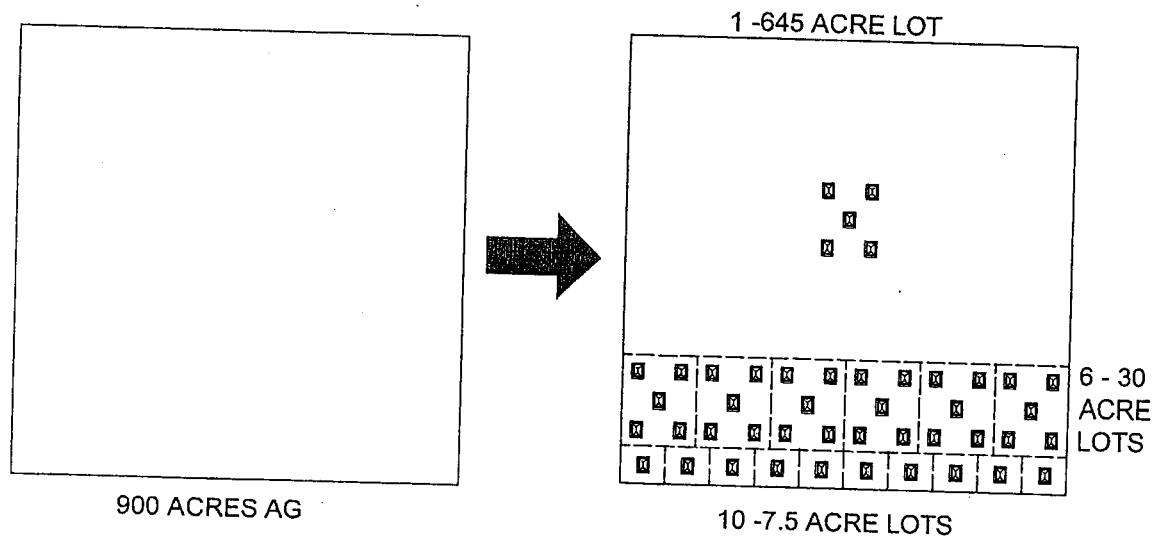
(A) *Any subdivision on land in State Land Use Commission Agricultural District shall be consistent with the provisions of H.R.S. Chapter 205 and Article 7 of Chapter 8 of Title IV of the Kaua'i County Code."*

The added language implements a sliding scale on County Open District Zoned land within the State Land Use Agricultural District similar to that of County Agricultural Zoned land with the exception that there are no provisions to allow lots smaller than five acres.

Language is also added which reinforces compliance to HRS Chapter 205.

Taken together with the proposed density cap a large lot subdivision on Open Zoning District land would now parallel lands zoned Agriculture District

The following example is a 900 acre parcel



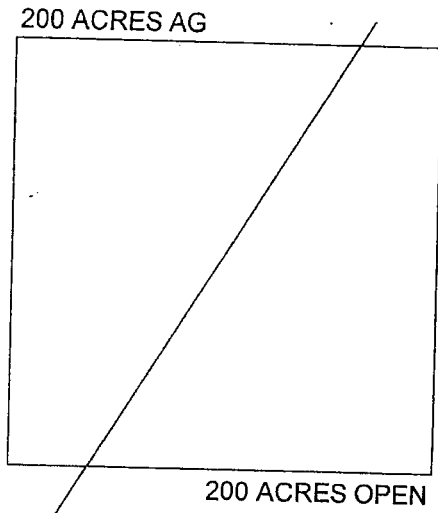
The resultant change under the proposed ordinance would be a decrease of 163 lots, a decrease of 135 units, and a gain in preservation of open space.

Cumulative Zoning Areas

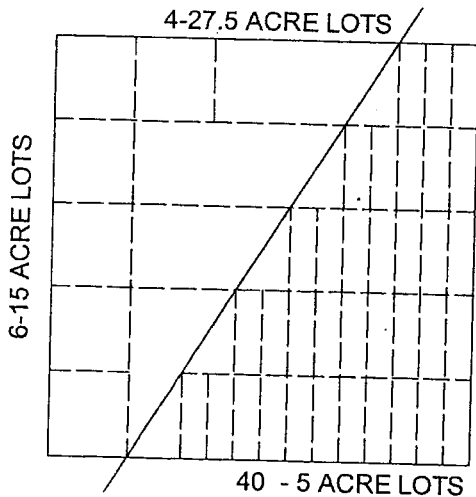
The bill also proposes the following addition to the General Provisions;

“For parcels containing multiple zoning designations each designation shall be considered individually in applying the standards of this Chapter, with the exception that any lot or parcel located in the State Land Use Commission Agricultural District and containing fifty (50) acres or more in the County Open District shall be considered together with the County Agriculture District for the purpose of subdivision.”

Currently all zoning districts are considered individually when applying the standards of the Comprehensive Zoning Ordinance. As the subdivision of the County Zone Agriculture is governed by a sliding scale, the fragmentation of the lot by zoning leads to more permissive standards and more lots. In effect, the lot is subdivided once by zoning and then again by the actual subdivision.



A sample lot of 400 acres within the State Land Use Agricultural District, 200 acres being in the County Open District and 200 acres in the County Agriculture District would subdivide as shown under various provisions of the bill.

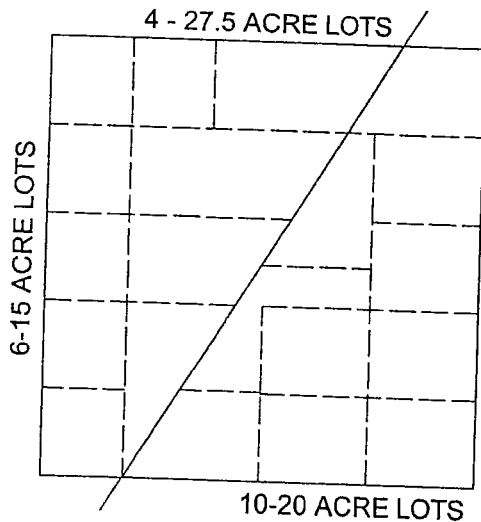


Under Current law the Agriculture District and Open Zone District would be considered separately.

The Agricultural acreage could be divided into 10 parcels none of which can be smaller than 5 acres

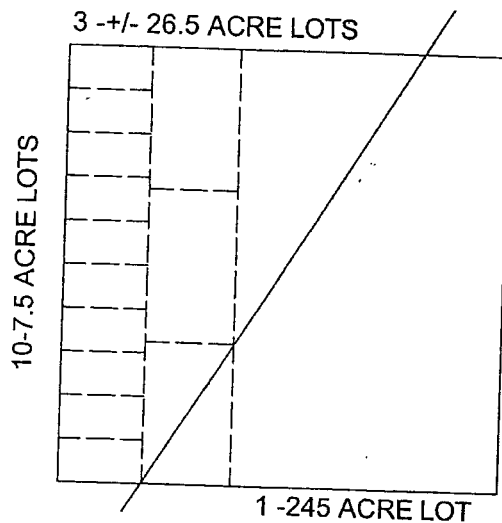
The Open acreage could be divided into 5 acre lots.

The resultant subdivision would yield 50 lots, most in the Open District; and a total of 90 units, 50 in the Agriculture District and 40 in the Open District



Under the Subdivision standards proposed in the bill, each zoning district could be subdivided into ten lots none of which could be smaller than 5 acres.

The resultant subdivision would result in 20 lots; and a total of 90 units, 50 in the Agricultural District and 40 in the Open District.



Under both the subdivision standards and cumulative rule proposed in the bill the entire acreage would be considered together and the lot would be subject to more restrictive standards of allowing 75 acres to be subdivided into 10 lots, 20% of the subdivision to be subdivided into lots no smaller than 20 acres, and the remainder to be unsubdivided.

The resultant subdivision would result in 14 lots; and a total of 62 units with most being in the Agricultural district.

CONCLUSION AND RECOMMENDATION

The proposed legislation would place severe but appropriate restrictions on large parcels within the County Open District. Such restrictions on development comply with the purpose of the Open Zoning District of

- (a) *To preserve, maintain, or improve the essential characteristics of the land and water areas that are:*
- (1) *of significant value to the public as scenic or recreational resources;*
 - (2) *important to the overall structure and organization of urban areas and which provide accessible and usable open areas for recreational and aesthetic purposes;*

- (3) *necessary to insulate or buffer the public and places of residence from undesirable environmental factors caused by, or related to, particular uses such as noise, dust, and visually offensive elements.*
- (b) *To preserve, maintain, or improve the essential functions of physical and ecological systems, forms or forces which significantly affect the general health, safety and welfare.*
- (c) *To define and regulate use and development within areas which may be potentially hazardous.*
- (e) *To include areas clearly indicated on the County General Plan or on Zoning maps as "Special Treatment – Open Space" if an applicant represents to government authorities that any properties or areas within a development proposal or subdivision application will remain either permanent open space or private park areas, or if the Council in the exercise of its zoning power requires as a condition of rezoning that an area be designated for permanent open space or private park. This does not preclude the Council from exercising its zoning authority as provided in Sec. 46-4, Hawai'i Revised Statutes. Within areas so designated, no uses, structures, or development inconsistent with such designation shall be generally permitted or permitted by use permit without express provision to the contrary. The Council is hereby authorized to make such factual determinations as necessary incident to this section.*
- (f) *To provide for other areas which because of more detailed analysis, or because of changing settlement characteristics, are determined to be of significant value to the public."*


Such restrictions on development further comply with the General Plan recommendations of


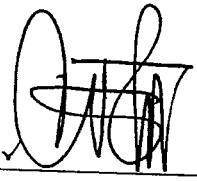
There is general agreement that this "density bonus" for Open lands contradicts the intent of the Open district and of the Agriculture district development standards. To correct this situation, it is recommended that the CZO be amended so that Open-zoned lands within Agriculture-zoned properties are treated as "Agriculture" for purposes of determining the allowable number of residential lots. Counting all acreage as Agriculture gives the benefit of the additional land to the owner while observing the intent of the Agriculture district's density limitations."

The proposed measures parallel the existing standards of the County Agriculture District and would serve to control development & sprawl within the Open District. Such sprawl has led to the loss of viable agricultural lands, higher costs for government to provide infrastructure services, and a development pattern inconsistent with the stated goals of the County General Plan of preserving rural character and maintaining a viable base of land for agricultural related activities.

It is further acknowledged that while zoning regulations are an important part of preserving Open Space and Agricultural land, they are only part of the necessary measures to achieve viable agriculture. Restricting the number of units available on a large parcel of land would limit speculative value, however there is a tremendous demand for land on Kaua'i. Zoning can only do so much against such demand. Thus this bill is one of many important pieces that must be implemented to preserve agricultural land and achieve a viable agricultural industry.

Based on the foregoing it is recommended that ZA-2010-3 be approved.

By 
Imai Aiu
Deputy Director

Approved  
Ian K. Costa
Director

EXCERPT
KAUA'I PLANNING COMMISSION
PUBLIC HEARING

A continued public hearing of the Planning Commission of the County of Kaua'i was held on **September 22, 2009**, in the Lihu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B. The following Commissioners were present:

Mr. Herman Texeira
Mr. Hartwell Blake
Mr. James Nishida
Mr. Jan Kimura
Ms. Camilla Matsumoto
Ms. Paula Morikami

Absent and excused:
Mr. Caven Raco

Chair, James Nishida opened this public hearing docket at 1:33 p.m. and the following excerpt, in effect, ensued:

Zoning Amendment ZA-2010-3: A proposed bill for an ordinance amending Sections 8-1.4 and 8-8.5 of the Kauai County Code, respectively.

- By requiring that parcels with multiple zoning designations be considered individually in applying development standards with the exception that parcels containing 50 acres or more situated within State Agricultural Land Use District and zoned Open District (O) be considered cumulatively with the remaining portion of the parcel zoned Agriculture District (A) for the purpose of subdivision; and
- by imposing standards for density, subdivision of land, and limitations on subdivisions currently applied on lands zoned Agriculture District (A) to lands zoned Open District (O) also situated within the State Agricultural Land Use District.

County of Kauai Planning Commission [Hearing continued 9/8/09.]

1. Supplemental Staff Report to this agenda item.

Deputy Director Imai Aiu read supplemental report (on file).

Staff: At this point Chair, staff would like to request continuance of the public hearing being that the Hawaii Conference of Planning Officials starts tomorrow and I will be going there and I will have a chance to speak to the Directors of the other islands about their Opening Zoning, any issues they have with them and how they implement.

Chair: Can I get a motion to receive the staff report, supplemental staff report and the two agency comments from Waste Water Management Division and the Engineering Division?

Ms. Matsumoto: So moved.

Ms. Morikami: Second.

Chair: Moved and seconded, all those in favor say aye, opposed, motion carried.

On motion made by Camilla Matsumoto and seconded by Paula Morikami, to receive supplemental staff report and agency comments, motion carried unanimously by voice vote.

Mr. Blake: Can I ask a question? As I understand it, if a large landowner dedicates more than 50 acres, 50 or more acres to Agriculture they are going to get a 15 acre break for up-zoning. Is that what this is?

Staff: No, that is relatively related. I believe what you are speaking to is kind of what is known as the 85/15 rule regarding Important Agriculture Lands. That is a State law where if a large, any landowner actually for that matter who owns State Agricultural Lands dedicates 85% of their lands to, dedicates it into Important Agricultural Lands they then would in tandem receive and up-zoning of 15% of their lands to either Urban or Rural designation.

Mr. Blake: 85% of all their land?

Staff: Of a particular holding. I am actually not too clear on the mechanics of how that works because they don't have to dedicate all of their lands to that. It doesn't have to be all of their land holdings.

Mr. Blake: But that topic is not on this agenda, right?

Staff: No.

Mr. Blake: Okay. I will come back to it next time.

Chair: Any other questions for Imai? Seeing none, anyone in the public want to speak on this agenda item, seeing none, you are asking for a continuance of the public hearing?

Mr. Costa: Actually we did continue this hearing from the last meeting just to make sure that people had another chance because at that meeting nobody testified as well. I guess given this second effort I would recommend closing it.

Staff: We can do that too and get the supplemental information at the next meeting and close.

Chair: What does the Commission want to do?

Mr. Blake: Move to receive?

Mr. Costa: I guess what Imai is saying is that we would be able to at least provide the Commission with additional information as to what other Counties are doing so it is your prerogative to close to either close or keep it open so that can be also entered into the testimony through the public hearing.

Mr. Jung: What the Director is saying is you have the option to close the public hearing right now if that is what the Commission wants to do.

Mr. Teixeira: But if we close the public hearing then we won't be able to, we are going to receive more testimony or more information from...

Mr. Costa: Well we are going to include that analysis and comparison probably in an additional staff report and reflect it in the amended recommendation.

Mr. Teixeira: So should we close the public hearing in light of the fact that we want to listen to more information or they are not related at all and we can just close the public hearing and still get more information?

Staff: Commissioner Teixeira, in light of that we have had two hearings now and no one has elected to speak on the matter and that we have subsequent meeting to which we can get you the information that is being request and that we are going to get at the HCPO, I would recommend closing, yes.

Mr. Teixeira: Motion to close public hearing.

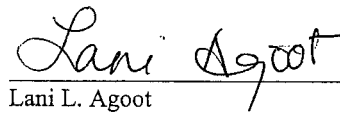
Ms. Morikami: Second.

Chair: Moved and seconded to close public hearing, all those in favor say aye, opposed, motion carried.

On motion made by Herman Teixeira and seconded by Paula Morikami, to close public hearing, motion carried unanimously by voice vote.

This portion ended at 1:40 p.m.

Respectfully Submitted.



Lani L. Agoot
Commission Support Clerk

EXCERPT
KAUA'I PLANNING COMMISSION
PUBLIC HEARING

A new public hearing of the Planning Commission of the County of Kaua'i was held on September 8, 2009, in the Lihu'e Civic Center, Mo'ikeha Building, Meeting Room 2A-2B. The following Commissioners were present:

Mr. Herman Texeira
Mr. Hartwell Blake
Mr. James Nishida
Mr. Jan Kimura
Ms. Camilla Matsumoto
Ms. Paula Morikami

Chair, James Nishida opened this public hearing docket at 3:42 p.m. and the following excerpt, in effect, ensued:

Zoning Amendment ZA-2010-3: A proposed bill for an ordinance amending Sections 8-1.4 and 8-8.5 of the Kauai County Code, respectively,

- by requiring that parcels with multiple zoning designations be considered individually in applying development standards with the exception that parcels containing 50 acres or more situated within the State Agricultural Land Use District and zoned Open District (O) be considered cumulatively with the remaining portion of the parcel zoned Agriculture District (A) for the purpose of subdivision; and
- by imposing standards for density, subdivision of land, and limitations on subdivisions currently applied on lands zoned Agricultural Land Use District.

County of Kauai Planning Commission

1. Staff Findings pertaining to this agenda item.

Deputy Planning Director, Imai Aiu, read staff report and department recommendation (on file).

Chair: Questions for Imai?

Ms. Morikami: Mr. Chair, I have a question for the planner. On page 13, middle of the page, "such restrictions on development further comply with the General Plan recommendations of...", there seems to be something missing or it doesn't flow with the rest of the...

Staff: I apologize for the mismatch in writing style there. I am referring to, about the third line down where it says "it is recommended that the CZO be amended so that Open Zone lands within the Agriculture Zoned properties are treated as agriculture for purposes of determining the allowed number of residential lots." So when I say the General Plan recommendations I mean that, where it says it is recommended. I see however that there is an agreement disconnect between that sentence and the quote.

Mr. Blake: Why do we even have this? Why do we have this problem with Open Zoned land? What motivated the people who came up with this zoning to allow so much development in the Open Zone?

Staff: Honestly, I wish I knew the answer to that. It is kind of, to me it is something that occurred around the same time that Maui slowed the sun in the sky. It is almost that long ago and that out of my memory as to why those densities were given at that time. It came around with the original CZO and I cannot say why that was framed that way. I can only speak to what that inconsistency has led to today.

Mr. Costa: And I only know what Keith Nita mentioned and that was that it was a concession I guess, if you will, to the plantations who would not have supported the Ag. Bill back when it was...

Mr. Blake: So the concession was that you take these important lands that are zoned restrictively Open, and say if you have a big enough parcel we are going to let you put however many you want on it.

Mr. Costa: I don't think it was any realization that those homes would actually...

Mr. Blake: Ever be built.

Mr. Costa: Right, but more had to do with value.

Mr. Blake: I mean that is fine with me, it makes since then, it doesn't make sense now.

Staff: That is exactly it. That is what we are facing now.

Mr. Costa: From day one, it is contrary to the labeling of the title of that designation.

Staff: For background information too, of Open Zone, we are the only County who has any type of density on their Open Zone lands. All the other equivalent zonings in the other Counties do not carry any residential density.

Mr. Blake: Is that where we should be aiming?

Staff: That is really up to your discretion. I would say that is really what you guys and the Council are given as policy makers to say where we should be aiming in that and should we move it entirely. I would be more than happy to go over kind of what the factors are involved in making that decision, what is the outcome of it and leave it to you to be the judge of whether that is, given your responsibilities, that is where you feel we should be aiming towards, zero.

Mr. Costa: In our past discussions I think anytime you go to zero I think that highlights the potential for takings.

Mr. Blake: Well I don't know if we should go with zero but if these lands are zoned because they are important for the reasons stated in the statute, maybe they should be reduced drastically.

Mr. Costa: And that is what this bill attempts to do.

Staff: I will give you some of the reasons for some of the numbers that have come up of what should be the densities on Open Zone lands, 5 is consistent with Agricultural Zoning and being that these are over State Land Use Agricultural Lands we felt that there were consistent uses there and consistent zoning so that a consistent number of density would be appropriate. I believe that was also discussed in prior CAC's, right?

Mr. Costa: I know for a fact that the CAC, that at least that participation created the draft in 1998 or 97, they actually looked at 3 as the cap from the perspective that it should be less than the Ag. which is 5.

Mr. Blake: Because it seems like until you get to the big parcels, Open is equal to Ag.

Staff: Actually Open is more restrictive.

Mr. Blake: Until you get to the big parcels.

Staff: Until you get to the big parcels.

Mr. Costa: It only allows one unit per 5 acres whereas Ag. you can get 2 with 4 acres. So like Imai pointed out it is right around that 25 acres threshold where Open now becomes the bonus because I think with 5 you can get 13 acres.

Staff: 13 acres already gives you 5 on Ag.

Mr. Costa: But yet because there is no cap on the Open but it takes 25 acres to realize 5 units, the same 5 units that you could get with 13 acres of Ag.

Chair: Questions for Imai?

Mr. Teixeira: Imai, so why can't you make it more restrictive in the Open? What's to preclude you from making it even more restrictive?

Staff: I would say that is absolutely within your prerule as a Commissioner to do so. I would just, as we did when we argued this, ask why one picks that number. We felt 5 was appropriate, again, because it mirrors existing standards. I have heard other arguments that say 1 is the appropriate number because we always, as you can see in some of the provisions of the CZO it always allows you to build 1 house. No matter if you are a nonconforming lot. So there is kind of a precedence set that says we are always going to allow you to at least live on your land. Some people have thrown out 1 as a number. The prior CAC, they came to 3 as a number. I can't say why but they did say less, it should be more restrictive given the nature of Open Zone land. So it is within your prerule to be more restrictive. I think we just need to arrive at a number with a justification.

Mr. Costa: There also was, I believe there was in about 2002 a proposed bill sent to Council, I believe it was approved by the Commission, addressing Ag. and Open land in the same State Land Use District that proposed the density be at 1. And there were another of other factors that you could get more than 1 should you agree to cluster and other things. But the bill never made it to the light of day so I would imagine...

Mr. Teixeira: So it might not again.

Mr. Costa: So this is, we feel this is a reasonable (inaudible) in the right direction. As soon as you, it's funny how as soon as we start discussing this we starting going, well what if we go lower. We haven't done that in 30 years but again this is a step in the right direction, a huge impact on the feasibility of doing large subdivisions.

Staff: I think also to comment on where you are asking the number took place, Commissioner Teixeira, is the problem that this bill is trying to address, particularly the mandate from the General Plan to stop that kind of sprawl and large agricultural and Gentlemen Estates subdivisions, those really take large lands to occur. If we cap at 5, the bill does not really affect any acreage smaller than 30 acres because if you have less than 30 acres you have 5 units anyway. So we are not telling you anything different than you are now. So the bill is really designed to go after larger properties which come in at the 31's, those that have more density, then start to realize 6 units, 7 units, go higher than that.

Mr. Teixeira: So how many units are we talking about? What percentage are they, units that are 30 or more, have you done a survey or done a data...

Staff: Actually we have done a preliminary listing of TMK's that would be affected by this piece of proposed legislation.

Mr. Teixeira: So what are we looking at?

Staff: I would have to get you that information. I don't know it off the top of my head, I'm sorry. But the point is the bill is not really intended to go after the smaller

parcels, the less than 30 acres so that cap does make it affective really only to parcels larger than 30 acres. So as we go down you are going to start getting more and more of those parcels involved.

Mr. Costa: As was the case in the CZO, Ag. District, from its adoption, was to allow as Imai pointed out graphically, the smaller homestead lots were allowed to subdivide down to the 1 acre level as apposed to the larger parcels that really facilitated intensive agriculture. The standard doesn't allow those to be fragmented in the same manner and promotes a larger remnant lot even after subdivision. So as Imai pointed out in his graphics, the larger the parcel becomes, actually the less lots you can get and the larger they are.

Mr. Blake: So if you have one parcel that contains Ag. and Open and the prior philosophy, if you will, was that you can live on your land no matter what kind of lot it is, if you have one parcel that has two different zonings on it you could obviously live on the Ag. side without any problem. So why does that trigger so many houses in the Open side? You know like the last graphic you had with the 200 acres, if I owned 400 acres, 200 of which were Ag. and 200 of which were Open, I can live on my lot, my 400 acre lot. I can live plenty places on my 400 acre lot so does that require, why does that permit me to have so many lots in the Open area?

Staff: I see what you are saying and that really is the question that the General Plan has been trying to address in this ordinance and the previous ones that were put up previously by the department is exactly that. If it is Open why does it carry so much density, particularly when you are saying that obviously you don't need that for your house. You have 5 houses on the other space, you don't need those Open lots if your only purpose is to live on that land. So the question you are asking is the very one that this bill is trying to answer and it is also the very one that I, like I said, I cannot tell you why those provisions were put in place to start with.

Mr. Costa: Commissioner, I think you are touching and maybe the County Attorney at the future meeting can clarify but up until I believe it's the (inaudible) case, the Open was treated as an overlay and it was that (inaudible) case that said you had to treat them separately. In other words whatever density that the CZO allows for an Open is separate from whatever density you are allowed in Ag. but prior to that the entire parcel was looked at as Ag. with an overlay of Open.

Mr. Jung: If I could just clarify for you, the way it has been take advantage of is through the CPR process. So say you live on the 200 acre, you have your 400 acre parcel and you live on the 200 acre Ag. portion and you have the 200 acre Open portion. You could go CPR the Open portion and sell those lots at a significant value because of those 5 acre parcels.

Mr. Costa: That 400 acre parcel, the 200 acres of Ag. would be allowed only 5 units and then the 200 acre portion of Open would be allowed 100 units so that is 105 unit CPR right there, without subdivision.

Mr. Blake: And that doesn't comport with the definition of Open and Ag. Open is supposed to be like more special than Ag., right?

Mr. Costa: But the Open section of the CZO allows 1 unit every 5 acres without a cap. And that really came to light when the court said sorry, the landowner has 200 acres open, that is separate and you have to allow him that in addition to the...

Chair: But aren't most of the Ag. subdivisions take advantage of that subdivision multiplier?

Staff: The subdivision multiplier?

Mr. Costa: Yes.

Chair: Most of them would subdivide the lots, the CPR, I don't think had very much to do with it in that they would take the number of units and then that is how many lots could be created. And then when the lots were created then they had some CPR's that could be created on those lots, right?

Staff: I don't think that is...

Mr. Costa: If you look at that same example, 105 units, 200 Ag., 200 Open, that doesn't mean you can get 205 lots.

Staff: Yes.

Mr. Costa: But the area that is Ag., obviously if you subdivide that you can get more than 5 now.

Chair: Right. That was what was happening.

Staff: Yes, that is the multiplier I think you are speaking of.

Chair: And then each one had a certain amount of density that was additionally CPR'd. It is just like what you have here. These have the same problem, not problem but...

Staff: Yes, if you look at the Ag. example, the 900 acre lot, when you get those (inaudible) acre lots you can put 3 on each of those and then so you would subsequently CPR down those 3 whereas you only had 5 on that property before and now you are ending up I think like 45 or 60.

Mr. Costa: The subdivision really helps you capitalize or multiply the Ag. or get around the 5 unit cap.

Staff: You achieve more units when you subdivide Ag. land. And should this bill pass the same will become true of Open land because it will have a cap too so when you subdivide it you will also realize more density.

Chair: But you have accounted for that in the report regarding how many units were allowed for this?

Staff: I noted that it will give more units, yes. I don't think we have accounted for in that we have adjusted the density numbers in any way. You still will realize more units.

Chair: So on page 11, your example under the current law, the Ag. District shall be considered separately...

Staff: Yes.

Chair: And on the bottom you said that "the resulting subdivision would yield 50 lots, most in the Open District and a total of 90 units, 50 in the Ag. District and 40 in the Open District." That 90 is the total amount of units that this subdivision creates?

Staff: Yes.

Chair: So with the CPR or anything like that, that has nothing to do with, CPR's have nothing to do with the total amount of units.

Mr. Costa: CPR's don't create density they just usually reflect the density that is provided through the zoning.

Chair: And then the remnant parcel, when you subdivide the Ag. District and you have a remnant parcel, how much density do you have on the remnant parcel?

Staff: 5.

Chair: On the Ag.?

Staff: 5.

Chair: And in the Open...

Staff: And in the Open you don't get a remnant parcel because you can just subdivide into straight 5 acre lots.

Chair: What about under the new rules, you have a remnant parcel.

Staff: 5.

Chair: You can have 5 and you counted that in the 62 total units?

Staff: Yes. In the last example you are talking about, right?

Chair: So in this case the 245 acre lot could be subdivided into 5 just like how the Ag. remnant lots could be subdivided into 5. I mean CPR'd.

Staff: Exactly.

Chair: So the CPR does not create any units.

Mr. Costa: Right, does not create or multiply density.

Chair: What multiplies density on the limitation to the lots was the furthest subdivisions into these smaller lots that had, then, density applied to them.

Staff: Yes.

Ms. Morikami: Mr. Chair, is there any way we can get a map to look at the island of Kauai and see where these Open area spaces are? My understanding is the Open spaces are really special and I don't know if they slope down towards the ocean. I don't know where they are located.

Mr. Costa: Typically Open is the valleys, ravines, floodways, so you have fingers that realistically when you go out there are the valleys, the drainage ways, the steep sloped areas.

Ms. Morikami: Are those mostly like where the view planes are?

Staff: In a lot of cases they would be considered...

Mr. Costa: Usually the valleys are what allows areas upland to have a view plane, right, because it drops away.

Ms. Morikami: How many acres are Open on Kauai?

Mr. Costa: I wish I could just spit out figure for you.

Ms. Morikami: I would like to know Agriculture and Open only because I can kind of like figure out what we are looking at.

Staff: We can find that number out for you.

Ms. Morikami: Because I do share the concern that Mr. Blake brought up about, I am wondering if this is restrictive enough but in order for me to answer that I need to see what the total spaces are.

Mr. Blake: So in Kapa'a, the land through which the canals run is Open?

Mr. Costa: Yes and all the flood areas adjacent to that, Wailua River, that valley, the valley with the slopes are all Open. It isn't until where it flattens out to some of the plains where basically you see the cane, those are then the Ag. But you know also, back then when those maps were done they were, the term is "done in a broad brush" way. Nobody went and surveyed, they are loosely laid to reflect the...

Mr. Blake: You can move the lines then after you do your flood study and so forth.

Mr. Costa: There is allowance for refinement to reflect the actual topography but I believe there is a provision in the State law that restricts it to no more than a 10% change or 1 acre, either way.

Chair: Imai, you two examples at the end where one is under the subdivision standards and the other one was both the subdivision standards and the cumulative rule proposed in the bill, the subdivision standards, why did you separate them out that way?

Staff: Basically that was to illustrate what the cumulative rule its self does because putting the subdivision standards in will achieve a certain amount of reduction. In other words you know you have gone down to the 20 acre lot, I mean to the 20 lot subdivision for that 200 acres. When you start looking at it cumulatively that lot bumps up to a higher standard of subdivision and so now you get a much more restrictive type of development.

Chair: So when you say like 3 26.5 acre lots and 10 7.5 acre lots, whatever it is, when practically, when the engineer comes in or when the architect, it would probably be an engineer, comes in with the proposed subdivision layout does it come in 5 acre lots like this or does...

Staff: No, not always. Like I said this is really just to simply graphically illustrate the rule as it goes. On the ground, yes, you have a lot more to consider than you topography to consider, where are you going to put the road? Where are you going to put the infrastructure systems? All of that to consider along with most cases they are also going to be looking at maximizing their density, trying to get as many units as possible out of that parcel. Because in most cases that is what you are going for right, are more sellable units. At least that is what we are trying to address in this bill.

Chair: So in the actual drawing out of the subdivision does it end up with less units based on the topography?

Mr. Costa: Typically, yes.

Staff: Yes, typically.

Mr. Costa: And then coupled with the provision that any common driveway road serving four or more units has to be built to County standards, now all of a sudden that road becomes bigger, cannot make S turns, cannot exceed a certain grade.

Chair: So this 400 acre lot, if you just CPR'd the whole 400 acre lot and avoid, supposedly avoid subdivision requirements and all of that, how many CPR's can you make out of this?

Staff: Under this bill?

Chair: Yes, under the proposed change.

Staff: Under the proposed ordinance, 10.

Mr. Costa: Whereas currently obviously 5, if it is one parcel, 5 max Ag. and it really depends on how much Open but typically...

Chair: Oh, that is what you meant.

Mr. Costa: If half of it was Open, another 100 units.

Chair: Must have had some lots out there that we looked at that never went to subdivision and just chose to CPR the whole thing.

Staff: Yes, what is it, Jurassic Park Ranch is an example of that, just CPR'd.

Chair: This bill for that kind of... is going to reduce quite a bit, the number.

Staff: Yes, putting cap on is going to...

Chair: What you are proposing here is with subdivision.

Staff: Yes.

Mr. Costa: I guess if the Commission is interested I can go get a zoning map just so you can graphically set how much in any given area, what the Open feature is. I think also it is kind of worth elaborating on the section, parcels more than 100 but less than 300, in contiguous ownership. That needs some elaboration because now even though you may have 4 large parcels that were all next to each other, if as of 1972 they were owned by the same owner like one of the plantations, or anybody in fact, the densities is for all 4 or those, not 4 times each one.

Staff: You subdivide in accordance with that.

Mr. Costa: And imagine this because we have discovered that if you purchased one of those and you came in to subdivide your density would be based on the contiguous. The problem is the other 3 parcels have been stripped of density.

Chair: I remember that discussion. So what happens then? That is how it is?

Mr. Costa: That is how it is. So we have had instances we have discovered whereby the other 3 parcels that were stripped were not part of that application and in some cases may not know.

Mr. Blake: So one owner has a cake that is divided into 4 parts.

Mr. Costa: That was done to recognize the plantations so that the plantations couldn't take one, go subdivide it, land bank the other. They had to look at all of those together and then become subject to the one-time subdivision. So they had to decided, it was a way of discouraging mass.

Mr. Blake: So the example you are using now is the large landowner stacked up all the density into one parcel, one of the contiguous parcels. That is how it stripped the density of the other 3?

Mr. Costa: By that provision that says if those were contiguous parcels and then it gives you the maximum number of subdividable lots. That is determined by looking at them all together.

Mr. Teixeira: What is the minimum, how many, the overall, how many acres?

Mr. Costa: Greater than...?

Staff: To get to that provision? It is greater than 300.

Mr. Teixeira: The part that is confusing is what if a large landowner wants to come in and master plan his property, their property and then they can go ahead and modify all of those things, right?

Staff: Modify?

Mr. Teixeira: When I say that, you are coming in with 300 acres, right, they come in with their master plan for their area and they can have Urban, Rural, Ag., subject to...

Staff: To approval, yes, they have the option to petition for rezone but rezone, you can absolutely say no to a rezone if it does not meet with what you feel is consistent with the General Plan or consistent with infrastructure requirements, long ranging planning requirements. If it doesn't meet those things you have a right to say no to these, subdivision, a lot more difficult.

Mr. Teixeira: Does it have to be in compliance with the General Plan? Sometimes the General Plan maybe was too liberal in years past. I mean are we going to use the General Plan as a guide and say the General Plan said that we can do this so therefore we are allowing it to happen?

Staff: We recognize the General Plan when considering rezonings, yes.

Mr. Jung: The General Plan is a policy driven document so they base their policies on the General Plan.

Mr. Costa: Right. It is really a document of goals and objectives, not regulations.

Mr. Jung: But you are right Commissioner Teixeira, they do have the avenue to attempt to do a rezone and because this is dealing with Ag. lands, once it gets over 15 acres then they have to go up to the Land Use Commission to do a rezone so it is sort of outside of your hands.

Staff: In that case if a landowner does propose a rezone that is kind of the fair enough way to do it, that is the way we would endorse you trying to get more density and master planning out of your land is to go through the rezone because that gives us the proper time and means to consider all the effects of that rezone, all the effects of putting that density and whether it does or does not conform with our long range goals.

Mr. Teixeira: So how does the General Plan relate to what you are suggesting right now then?

Staff: The General Plan relates to one, and probably most importantly, is the General Plan recognizes that there is an open density bonus that has been taken advantage of to create these large agricultural subdivisions, the gentlemen estates and that should be fixed.

Mr. Teixeira: So you are deviating from the original intent of the General Plan then.

Staff: No, we are fulfilling the intent of the General Plan to make it more restrictive.

Mr. Costa: The 2000 General Plan specifically recommends that the County look at one of its implementing actions to address that density bonus.

Mr. Jung: Commissioner Teixeira, if you look in the purpose of the proposed bill there is a provision from the General Plan to contemplate the Open density bonus.

Mr. Teixeira: I just keep thinking that we keep revising and revisiting the General Plan updates every 10 years or whatever it is so therefore if we are doing updates that we are changing, that means that we must not always agree with what they recommended originally and we want to maybe make it better. That is what I am thinking.

Mr. Blake: That being the case we should but the 3 in instead of 5 because that is what the Citizens Advisory Committee studied and recommended.

Mr. Costa: We did use that as a starting point. I think we had real difficulty figuring out what science or rationale is behind the 3.

Staff: Correct me if I am wrong Ian, but I don't believe it was the General Plan CAC that said 3, right, it was the CZO that said 3.

Mr. Blake: Have the other islands experienced any problems with saying none?

Staff: That would be, I cannot say conclusively yes or no, any hiccups they experienced with it. Obviously it exists so it must work in some form.

Mr. Blake: And when you say none that means that owner can have one?

Staff: No, I believe they are at none.

Mr. Blake: If own a 1,000 acres of Open it is just pasture?

Staff: I believe so, yes. I don't know of any specific provisions that say they are allowed a single one.

Chair: Isn't the Big Island one if you have a subdivided lot you are entitled to one for that lot. It's regardless of zoning I think.

Mr. Costa: I think we should, we can provide the actual what it is actually their regulation and we don't want to speculate any further.

Mr. Blake: Because this to me ties into what we had before about the long range planners were talking about. We live on Kauai because we choose to live here. If we want more urban settings and more urban amenities we can move to Oahu or Las Vegas or wherever. So if the urban or the rural values and ambiance and so forth are important then we shouldn't try to double up on everything, make it kind of rural, kind of urban and try to please everybody. It's either one or the other. Otherwise we are just going to end up with sprawl all over the place, is my way of thinking. And it is happening on the South Shore which, like Waikiki, which is the South Shore of Oahu, is the tourist engine of that island and the South Shore is now becoming the tourist engine of Kauai, providing a lot of the jobs and income because of the weather and conditions. So given that we should, I think, concentrate on that where it is best suited and not try to spread everything all over.

Mr. Costa: Well that is what the original General Plan did was focus the resort areas in Princeville, Poi'pu, Kapa'a, and made a bold policy statement back then which has certainly served us well.

Mr. Blake: And that is not to say that you can't have a resort somewhere else.

Mr. Costa: Well we have seen that in Kapaalawai.

Mr. Blake: Kapaalawai, right, but it should fit the area. I mean it should comport to the area versus forcing the area to fit the development. So to me I would like to know how the other islands treat their Open Zoned areas to see if we can learn something from them.

Chair: And then for that matter the Agricultural Zones too.

Mr. Costa: But again, I think the department believes this was a reasonable approach to begin reduction and like I said it's kind of funny because once you start reducing it's like well what if we went all the way. But that is why I brought out the example of the bill that did go up to Council that still sits on the shelf.

Mr. Blake: I always thought the clustering idea, that Hudson River Plan, that was a great idea and I remember (inaudible) about a parcel that was Ag. as being cut up into the 5 plus acre lots. And I said why not cluster it so that you still have this big area that you can use, it is worth becoming a farmer going in there rather than having tiny little plots. And their response was well if you are selling them for a million bucks nobody wants to have a 10,000 square foot lot and own 80 acres in common. Well the thing is that if it's Ag., actually that is a function of price. It you have a 10,000 square foot lot and you own the rest of it in common you may not want to pay as much as if you had 10 acres or 5 acres. But if that is the law then you do what you have to do under the law. So I thought clustering was a great idea. I am surprised, I am not surprised, I am disappointed that it never went anywhere but I vividly remember that presentation and I thought it was a very forward (inaudible).

Mr. Costa: The plantations were the classic example of clustering.

Mr. Blake: Right.

Mr. Costa: And the benefits of clustering.

Mr. Blake: So we have experience with that but so much for my editorial comments. But I think like you said, going down, down, down, if we are going down, we better go down because the next time we want to talk about this, they will say "well, just last year you did 3 acres."

Ms. Matsumoto: That is what I was going to say too because it is a matter of perspective. You don't want to go get to a point where in the future you say zero, it is going to be too late. You want to preserve what you have as much as you can here, is my feeling. It might sound harsh but it is to plan for the future. It is like many cases on Oahu, they let development go along and look at it now and now they say stop developing this because it is a small parcel of land and it's rather late when you look at the grand scheme of things.

Mr. Costa: And I guess there will be some long term ripple effects in having to up-zone other areas to accommodate the thousands and thousands that are determined to move here.

Chair: So Hartwell, when you say 3, you meant, what were you saying, the maximum 3 units in the Open? So you still have the 5 in the subdivision and all that? The 5 lots in the Ag., 3 lots in the Open, that is what you are saying, 5 and 3, 5 in the Ag. and 3? Is it easy to calculate what it would look like as far as the lots?

Staff: Well under what Commissioner Blake is proposing it is just a density change so the lots would still be the same. As far as what the densities would look like, yes, you would get a change and again, it wouldn't start becoming apparent until you get to the large lots. So let's look at the last example, if you are going to put a cap on that, since most of it is in the Ag. you probably are only going to realize a reduction down to 60 units there. However let's look at the example on page 10 and say that that is an Open Zoned lot, you take 2 off of basically each lot that has 5, right, so you are going to lose 14 units out of there.

Chair: The 645 acre lot example.

Staff: Yes, the 645 acre lot will now only get 3 units, right, all those 30 acre lots would only get 3 units if that is the cap.

Chair: I see. So we are going to leave the public hearing open and then come back with that other information next time?

Mr. Costa: I guess given the significance of the bill and the curious absence of public that is what I would recommend.

Ms. Matsumoto: Imai, on page 12, under conclusion and recommendation, I think there is another typo. It starts off with "the proposed legislation," and then it ends with "Open Zone District of". I think you can take the "of" out.

Staff: Okay.

Ms. Morikami: Mr. Chair, move to receive the Director's report.

Ms. Matsumoto: Second.

Chair: All those in favor say aye, opposed, motion carried.

On motion made by Paula Morikami and seconded by Camilla Matsumoto, to receive the Director's Report, motion carried unanimously by voice vote.

Ms. Morikami: Mr. Chair, move to defer this item to the next meeting and keep the public hearing open.

Mr. Texeira: Second.

Chair: Moved and seconded, all those...

Mr. Costa: And for the record that would be September 22nd.

Chair: Continue the public hearing, moved and seconded, all those in favor say aye, opposed, motion carried.

On motion made by Paula Morikami and seconded by Herman Texeira, to continue public hearing to 9/22/09, motion carried unanimously by voice vote.

Staff: Chair, you did have a piece of testimony from Malama Kauai.

Chair: Can I get a motion to receive?

Ms. Morikami: Mr. Chair, move to receive the communication from Malama Kauai, dated September 8, 2009.

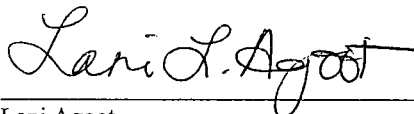
Mr. Texeira: Second.

Chair: Moved and seconded, all those in favor say aye, opposed, motion carried.

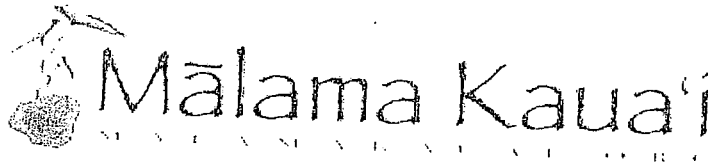
On motion made by Paula Morikami and seconded by Herman Texeira, to receive testimony from Malama Kauai, dated 9/8/09, motion carried unanimously by voice vote.

This portion ended at 4:50 p.m.

Respectfully Submitted.



Lani Agoot
Commission Support Clerk



September 8, 2009

County of Kauai Planning Commission
4444 Rice St # 473
Lihue, HI 96766-1326

Aloha Planning Commissioners,

Malama Kaua`i is in support of the Zoning Amendment ZA-2010-3.

We have reviewed the copy of the staff report on the matter and agree with the findings and proposed amendments. The idea that lands zoned Open District (O) have density at the levels currently allowed is inconsistent with the general intention of the zoning itself. This Amendment seeks to restore a reasonable standard consistent with density limits on lands zoned Agriculture District (A) by the County of Kauai.

Zoning Amendment ZA-2010-3 does not, however, address the potential ramifications of SB 2646, and we suggest that you take this opportunity to do so.

Senate Bill 2646 allows large landowners to fast-track reclassification of 15 percent of state zoned agricultural lands to the urban or rural districts in exchange for labeling 85 percent of lands as Important Agricultural Lands. This contradictory 85-15 "incentive" formula could allow for rampant rural developments with out a requirement for community input or to address any state or county land-use planning, such as the General Plan or Area Treatment Plans. This is done through a special declaratory order from the Land Use Commission (LUC) laid out by SB 2646, thereby short-circuiting government oversight and denying local communities the ability to protect their rights.

This measure removes any community planning process by failing to require rural reclassifications to conform with existing county plans. Under SB 2646, the LUC has no jurisdiction to deny rezoning when the conditions are met. SB 2646 significantly reduces the criteria that must be met in order to receive reclassification. Because the location of this reclassification is left up to the landowner, it will fuel suburban sprawl by allowing for high density in lands zoned for rural in areas that truly should remain open space or used for agriculture— undermining our shared commitment to sustainability and smart growth principles.

Please consider the potential density impacts that could occur as a result of SB 2646 and use this opportunity to further strengthen ZA-2010-3 by including additional language.

In order to ensure consistent use of lands zoned ag or open by the county, we recommend that an additional amendment be included that either:

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E. a. b



1. Places the same restrictions being proposed in ZA-2010-3 for lands zoned open, to lands reclassified as rural if the reclassification was obtained by invoking SB 2646 (or to be less biased towards SB 2646, if the lands being rezoned conflict with any county level land use plans regarding density) or
2. Set up a review process within the County Planning Department that allows for density limits that are consistent with county level plans to be placed on lands reclassified rural through SB 2646 (or to be less biased towards SB 2646, if the lands being rezoned conflict with any county level land use plans regarding density)

Because SB 2646 limits the ability for the LUC to deny a reclassification request we feel this additional clause would enable the county final oversight on matters of density on lands zoned agricultural district (A) or open district (O) that are reclassified to rural, especially when that reclassification could take place without consideration for county land use plans.

Mahalo nui loa,

Andrea Brower and Keone Kealoha