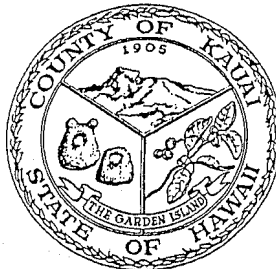


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July 10, 2008

Honorable James Nishida, Chairman
and Members of the Kauai Planning Commission

RE: Bill to Amend Chapter 8, Sections 1.4 and 8.5 of the Kauai County Code

Dear Chairman Nishida and Members of the Planning Commission,

During Mayor Bernard P. Carvalho's presentation to the Planning Commission at its meeting of May 26, 2009 he announced his intent to support and direct the Planning Department to forward legislative initiatives to the Planning Commission, which provide improved land use standards for preserving valuable agricultural lands. This memorandum is being transmitted pursuant to the Mayor's presentation.

The Mayor outlined three initiatives being developed and finalized to improved controls for preserving agricultural lands.

1. The first of these initiatives is attached for your review and processing for approval. This initiative is a draft ordinance proposing to reduce the allowable residential density and the number of lots that can be created through subdivision of parcels/lots within the County's Open Zoning District. This measure proposes a maximum residential density cap of 5 units for individual parcels, consistent with the maximum density allowed within the County's Agricultural Zoning District.

Further, Section 5.3.3(a) "Implementing Actions" of the Kauai County General Plan states:

"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."

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2. The second initiative outlined by Mayor Carvalho is intended to facilitate and enhance public testimony and input to the Planning Commission for the processing and approval of subdivision applications involving agricultural lands. Through review and analysis of several alternatives by the Planning Department and the Office of the County Attorney, the Mayor requests that the Planning Commission, through its Subdivision Committee, implement a policy and procedure to include a "Public Comment" agenda item on each Subdivision Committee Agenda. This procedure will proactively facilitate public input and comment for all items listed on the Committee's agenda prior to the Committee's action on all subdivision applications. This approach can be implemented by the Planning Commission immediately.

3. The third initiative presented by the Mayor is intended to provide requirements for the County's approval of Condominium Property Regime (CPR) proposals. Currently, the State's Real Estate Commission is the sole authority for approval of CPRs. The legal requirements for CPR approval and related issues for proposed County regulatory authority is still being reviewed and analyzed by the Planning Department and the Office of the County Attorney. Therefore, no legislative initiative is proposed at this time.

On behalf of Mayor Bernard P. Carvalho's administration, we humbly request your support, introduction, processing and implementation of the foregoing initiatives to improve the County's administration of existing regulations intended to preserve agricultural lands for agricultural production.

Sincerely,



IAN K. COSTA

Director of Planning

IKC

Attachment:

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 Kaua'i 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 subdivision.

(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 axle's, 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'II, 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 "Agricultureal" 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 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.

(2) 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.