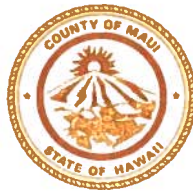


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January 28, 2020

**MEMORANDUM**

**TO:** MAUI PLANNING COMMISSION  
LANAI PLANNING COMMISSION  
MOLOKAI PLANNING COMMISSION

**FROM:** MICHELE MCLEAN, AICP   
PLANNING DIRECTOR

**SUBJECT: MAUI COUNTY CODE TITLE 19 ZONING CODE REWRITE PROJECT**

**BACKGROUND**

Maui County Code (MCC) Title 19, Zoning was adopted in 1960 shortly after Hawai'i became a state in 1959. While Maui County and the world around it have changed dramatically from 1960 to today, the County has responded to some of this change by incrementally adopting numerous targeted amendments to Title 19. These amendments have typically been stopgap measures rather than long-term solutions. Over time, these amendments and their relationship to other code sections have created confusing and conflicting interpretations as well as complex layers of administration.

**THE TITLE 19 AUDIT**

In March 2018, an audit of Title 19 (Exhibit "1", Final Report without Appendices) was concluded and found that the code, as it exists today, is cumbersome and somewhat confusing; contains provisions and terms that are often ambiguous, inconsistent, outdated or obsolete, and redundant; involves complex permit review and code enforcement procedures; and contains standards that do not promote the livable, built environment that is identified in the General Plan. The complete audit report, including all appendices, can be found on Maui County's website at: <https://www.mauicounty.gov/DocumentCenter/View/112081/MCC-Title-19-Zoning-Audit-Report-and-Appendices-March-2018-?bidId=>

Based on these findings, recommendations were made in the audit that included an overall strategy for streamlining Title 19 and identifying content and policy issues that the County should explore further in subsequent update/revision work. Specifically, the audit recommended the following:

1. Create a simplified hybrid zoning code;
2. Promote housing choice and affordability;
3. Address specific use needs and issues;
4. Create multi-modal standards;
5. Revise plan content and process;
6. Implement organizational change.

### **GOALS FOR THE TITLE 19 REWRITE**

The Department requested funds in FY2019 in order to move forward with the audit's recommendation to rewrite and create a new hybrid zoning code. Orion Planning & Design was selected as the consultant for the Title 19 Rewrite Project and 16 objectives have been identified:

1. Assure that the new hybrid zoning code implements General Plan concepts; meets the requirements of Hawaii Revised Statutes; avoids conflicts with other MCC sections, particularly Title 18 relating to subdivisions, and Administrative Rules; and is legally defensible.
2. Make Title 19 easier to understand and administer, with modern and current definitions, standards, graphics, diagrams, illustrations, tables, etc. Graphics should be produced and provided to the County in such a manner that involves their easy editing later, using common non-proprietary commercial software.
3. Improve the overall efficiency, simplicity and predictability of regulatory and permitting processes, while allowing reasonable flexibility.
4. Provide protection for important agricultural, environmental, cultural and historical resources.
5. Provide for regulatory best practices related to design standards that address climate adaptation and sea-level rise.
6. Provide greater clarity relative to lawful non-conforming uses, structures, lots and other situations created in the past; and include provisions for administration of nonconformities created by the adoption of the new code.
7. Include context-sensitive place-based regulatory standards and districts with an emphasis on protecting and enhancing community character, implementing General Plan concepts and promoting Hawaiian principles and practices.
8. Develop a User's ("Layperson's") Guide to Zoning for the public to help navigate through the new code.

9. Promote connected, compact, sustainable communities with a mix of uses and housing types that incorporate multi-modal transportation systems and a Complete Streets policy.
10. Include provisions that will help the County achieve high-quality infill and redevelopment projects while maintaining and respecting the diversity of each community/neighborhood.
11. Offer a wider variety of zoning options, including new or consolidated zoning districts, land use concepts, development standards and form-based code recommendations that more effectively implement the goals and objectives of the General Plan, accommodate the County's future needs and development opportunities, and promotes and facilitates affordable housing.
12. Provide for the possible replacement of Project Districts and Planned Developments, if feasible, with other appropriate approaches. These districts, considered at times to be overused, exists due in part to the inadequacy of current standard zoning district options.
13. Include an efficient process for regulating short-term rentals based on best practices.
14. Reduce dependence on discretionary actions and overlays, thus enabling the Department of Planning to function more efficiently and do more with limited resources. Provide for a hierarchy of approvals that requires fewer and simpler processes for uncomplicated projects and more stringent processes for complex and controversial projects. Wherever possible, increase the range of development and/or use proposals which can either have no active review at all or administrative approvals for simpler projects.
15. Tie sense of place to the zoning code districts and design standards by coordinating with the County's effort to update the community plan land use designations.
16. Provide a detailed plan for transition from the former zoning code to the new zoning code, especially to deal with nonconformities created by adoption of the new code.

The Title 19 Rewrite Project has an anticipated four-year timeline and will involve a robust Public Participation Plan (PPP). The PPP includes using a variety of tools to engage and garner input and review from the public, development community and other interested parties. Some of these tools will include a project website, social media, community workshops, informational open houses and planning commission work sessions; a Technical Advisory Committee, comprised of

planning staff representing each division within the Department, as well as other County staff from related departments; and, an Advisory Group comprised of a broad spectrum of representatives, mostly from the stakeholder groups who were involved in the Title 19 Audit, who are familiar with the code.

**THE ROLE OF THE COMMISSIONS:**

- Keep abreast of Title 19 Rewrite project milestones by attending meetings in which work sessions, reports and updates will be provided by staff and staff's consultant;
- Refer questions and comments received from the public on the Title 19 Rewrite Project to appropriate planning staff;
- Weigh in on drafted elements of the code and provide feedback.

The Department and Commissions have a common mission to produce the best possible zoning code for the citizens of Maui County. We are committed to this task and look forward to working with you to attain this goal.

Attachment

MCM:KRA:CEC:rh1

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EXHIBIT "1"



# **TITLE 19 ZONING CODE AUDIT**

**Final Report - March 2018**



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# EXECUTIVE SUMMARY

Title 19, Maui County's zoning code, was originally adopted in 1960 shortly after Hawai'i became a state in 1959. It has not been comprehensively updated since. Maui and the world around it has changed dramatically from 1960 to today. The County responded to some of this change and the changing needs of its citizens by adopting numerous targeted amendments to Title 19, but these amendments have typically been stopgap measures rather than long-term solutions. Over time, these amendments and their relationship to other code sections have created substantial administrative confusion, conflicting interpretations and complex layers of administration.

Generally-accepted planning principles show that, to remain relevant, efficient, and effective, zoning codes should be comprehensively reviewed and rewritten on average about every ten years. Where the pace of change is slow longer intervals may be justified; where it is fast shorter intervals may be necessary. Title 19's age of 57 years is an exceptionally long length of time to expect a zoning code to work properly. Orion Planning + Design strongly recommends that Maui County completely rewrite Title 19 to address significant changes in zoning that cannot be accomplished effectively through incremental change. Concurrently, Orion Planning + Design recommends that this rewrite be used as an opportunity to rethink overall planning strategy and rebuild support and trust among those charged with administering and abiding by the code.

## BACKGROUND AND PURPOSE

In October 2016, Maui County issued a request for proposals to conduct a comprehensive audit and analysis of Title 19 of the Maui County Code (MCC). Title 19 enacts zoning for three primary purposes which can be summarized as follows:

1. To regulate the use of land in a manner that is consistent with adopted state and local laws;
2. To promote and protect the public health, safety, and welfare; and
3. To implement community plans (MCC 19.04.015).

The objective of the audit was to determine how well the code is meeting these purposes, and to suggest ways in which it can be improved to make it a "dynamic document that provides for best practice in land use regulation."

Title 19 was originally adopted in 1960. Although it has been the subject of scores of amendments over the course of 57 years, the code has not been comprehensively updated or amended since adoption. Amendments are common practice to address omissions, errors, and new circumstances. Over time, however, such amendments can begin to weaken the overall zoning framework by establishing new standards, procedures, and definitions that introduce redundancy and internal conflict. This can lead to an excessive amount of interpretation and rulemaking as well as growing frustration among staff, boards, citizens, and applicants. This is where Maui County found itself in 2016 when it selected Orion Planning + Design to complete the Title 19 audit and analysis.

## EFFECTIVE ZONING CODES

As a zoning code, Title 19 exists to implement plans and policies and to safeguard public interests. Hawai'i Revised Statute §46-4 states that:

*Zoning in all counties shall be accomplished within the framework of a long-range, comprehensive general plan prepared or being prepared to guide the overall future development of the county. Zoning shall be one of the tools available to the county to put the general plan into effect in an orderly manner.*

1. Our analysis also considered other purposes for zoning which include: Serving as an important tool to help preserve, create, and protect community;
2. Protecting public and private investment; and
3. Encouraging better development. This latter purpose is primarily accomplished through incentives and the inclusion of design standards, but may also be influenced by well-designed graphics that help applicants visualize intent.

Despite expertise, good intentions, and other resources a community



may have to invest in creating and administering zoning, there is no perfect zoning code or zoning program, and all zoning codes become obsolete over time if not comprehensively reviewed and rewritten on a regular basis. Likewise, there is no model code that every city or county should follow. Each code should be customized to address unique community development needs, resources, and aspirations. A review of best practices indicates that effective codes are characterized by:

1. Use of simple, clear language;
2. Inclusion of tables to help organize information and make it easier to read and compare;
3. Use of quality graphics to convey concepts;
4. Reasonable flexibility in standards;
5. Consistent, predictable processes;
6. Standards that implement plans and policies; and
7. Broad support within the organization evidenced by educated, well trained staff, well trained and committed boards and elected officials, and sufficient resources to effectively administer and enforce adopted standards.

## METHODOLOGY

### Overview

The methodology for auditing and analyzing Title 19 was detailed in the contracted scope of work and based on our desire to learn as much as possible about Maui's planning and development circumstances and especially Title 19 and its associated plans and policies. The process included a comprehensive review of Title 19 content and administrative processes; a tour of Maui Island (later expanded to include portions of Moloka'i and Lāna'i); a summary of the Maui General Plan; and interviews with identified stakeholders. Information gathered through these methods was supplemented by surveying internal and external code users, and by researching literature and other codes regarding issues relevant to Maui.



The Orion team and County staff onsite during Trip 1 to Maui.

### Web-based Meetings with Staff

Prior to the audit team's first site visit (Trip 1) and its series of stakeholder meetings, Maui County hosted several web-based meetings between the Orion Planning + Design team and divisions within the Department of Planning. These meetings served several key purposes:

1. They introduced the Orion Planning + Design team to the staff;
2. They provided an overview of how each division uses or impacts Title 19; and
3. They initiated an important dialogue between Orion Planning + Design and staff on what is and is not working in Title 19.

The results of these meetings guided our initial background research and informed the series of questions we had for each stakeholder group, as well as survey respondents.

## **Stakeholder Interviews**

Stakeholder interviews and tours were conducted during two trips to Maui. Trip 1 encompassed five-days and focused on initial stakeholder input and tours of Maui and Molokaʻi. Stakeholders interviewed included:

- Planning Administration
- Plan Implementation
- Current Planning
- Long-Range Planning
- Zoning Administration and Enforcement
- Department of Parks and Recreation
- Real Property Tax
- County Department of Transportation (DOT)
- Travel and Tourism groups
- Department of Public Works (Engineering and Highways Development Services Administration)
- State DOT
- Maui County Healthy Eating + Active Living (HEAL) Coalition
- Developers
- Significant land owners
- Economic development groups
- Property owners' associations
- Maui County Farm Bureau
- Department of Environmental Management
- Department of Water Supply
- Agriculture Working Group
- Maui Metropolitan Planning Organization (MPO)
- Interested environmental groups and community associations

The audit team also consulted with the State of Hawaiʻi Office of Planning on issues related to state land use designation, important agricultural

lands and the state's ongoing effort to complete a policy on planning for the impacts of climate change. Stakeholders were invited to meet with the audit team again during Trip 2 to provide feedback on our findings and draft recommendations.

## **Tours**

One day of Trip 1 was set aside to tour central, southern, and western Maui Island. This included Wailuku, Kahului, Pāʻia, Makawao, Kīhei, Wailea-Mākena, Lahaina, Kāʻanapali, and Kapalua. This tour was led by staff and provided a first-hand look at the variety of distinct areas on Maui as well as land use issues the county is currently experiencing. In addition to this guided tour, the audit team spent a day exploring the east side of the island from Kīhei to Hāna, and one member of the team traveled to Molokaʻi during Site Visit 1 and another to Lānaʻi during Site Visit 2 to gain additional insights into these islands. Although none of the side trips were part of the approved scope of work due to funding limitations, the audit team believed that seeing these areas first-hand was very important to understanding Maui County and would better fulfill the project mission to learn as much as possible about Maui during our time onsite.

## **Surveys**

Following Site Visit 1, the audit team in partnership with staff, created two survey instruments using SurveyMonkey™. One survey was intended for staff, boards and commission members representing internal users of Title 19. The other survey was intended for external users such as builders, developers, designers, homeowners' associations, residents, economic developers, and property owners. Both surveys were sent to Maui Planning staff in May of 2017 for distribution and closed at the end of June of 2017.

The purpose of the surveys was to collect users' experiences and knowledge of Title 19 that would be helpful in the code audit and update. Although SurveyMonkey™ does have a statistical significance feature that can be used to test survey questions, the survey's intent was to represent the opinions of the respondents only.



Site visit to Lahaina.

## **Summary Review of Plans**

Understanding Title 19 and its relationship to the Maui County General Plan was important to the audit process. The audit team did not conduct a complete review or audit of every county plan, but did conduct a summary review which allowed for broad understanding as to how these plans are or are not implemented by Title 19.

Title 2, Chapter 2.80B of the Maui County Code mandates the Maui County planning framework. It requires certain plans, sets forth criteria each plan must meet, and establishes a public engagement and plan development strategy replete with advisory committees and time frames. The required plans together form the Maui County General Plan and include the Countywide Policy Plan, the Maui Island Plan, and nine community plans.

## **Additional Research and Review**

The audit team reviewed numerous articles, reports, websites, texts, statutes, and codes related to Hawai'i planning law, issues identified during Trip 1, and survey results. This information was invaluable to the review and analysis of Title 19 and the creation of recommendations. In addition

to outside sources, the audit team also employed its extensive practice based knowledge and understanding of successful code provisions and structure. While there may be no model code for Maui to emulate, there are provisions and characteristics of other codes that have direct application in Maui and which provide excellent examples of better code content and construction. The results of this research as well as materials from the audits team's library formed the core of the Summary of Best Practices deliverable (excerpted in this report in select places) for Maui County's consideration.

## **Deliverables**

Throughout the Title 19 Audit, a series of deliverables was created to organize and summarize process, and to report findings and recommendations. These deliverables include:

- A draft work plan
- A summary of the plan-code relationship
- Summary findings from field trip(s)
- A summary of stakeholder meetings during Site Visit 1
- A summary of best practices in zoning and land use regulations
- A summary of the survey findings
- Preliminary rough draft of findings and recommendations
- Preliminary public draft of findings and recommendations
- A summary of the results of stakeholder meetings during Site Visit 2
- Public Review Draft presentation on final findings and recommendations and solutions;
- Presentation(s) to the Maui County Council on the final findings and various recommendations proposed; and
- A suggested scope and associated budget for Phase II of the Title 19 Zoning Code project which would entail a full rewrite of the text.

ISSUES	COUNTY STAFF										TRIP TOURS	EXTERNAL STAKEHOLDERS								
	Real Property Tax	County DOT	DPW & HDOT	Parks & Recreation	Zoning Admin. & Enf.	Long Range Planning	Environmental Mgmt	Water Supply	Current Planning	Plan Implementation		Travel & Tourism	MPO & HEAL	Planners, engineers, etc.	Dev., Builders, Owners	Economic Dev. Groups	Prop. Owners Assoc.	Environmental Groups	Farm Bureau	AG Working Group
PLANNING APPROACH & POLICY																				
1. Underlying code is old and doesn’t reflect current goals, priorities, or contemporary development practices					X	X			X	X			X	X	X	X	X			X
2. Over reliance on interpretive policy memos					X	X			X	X				X	X					
3. Confusing relationship between code and plans: plans are viewed as regulatory and advisory			X		X	X	X	X	X	X	X			X	X	X	X			
4. Extraordinarily large number of plan implementation actions (over 1100) increases management complexity and challenges					X	X			X	X								X		
5. Code language describes uses in ways that are difficult to translate to zoning definitions, tables OR definitions are not updated to reflect plan language; creates conflicts					X	X		X	X	X			X	X	X	X				
6. The number (quantity) of plans and planning layers (county, state, federal) is a real challenge; no “vertical integration” between plans					X	X		X	X	X				X	X	X				
7. Layering of plans and processes creates inconsistency and the challenge of interpretation					X	X			X	X				X	X	X	X	X		
8. Need to allow a project district to be modified concurrent with a community plan					X	X			X	X				X	X					

An excerpt from the summary of initial findings completed following Trip 1 staff and stakeholder meetings and site visits.



# KEY FINDINGS

Following months of research, review and analysis, the audit team developed a list of key issues as a foundation for the audit's ultimate recommendations. These are listed below with a brief explanation.

## The plan-code relationship is weak.

While many plan policies and actions are at least partially covered by Title 19, there is very little evidence that Title 19 intentionally implements Maui's plans except for the project districts. There are some alignments, but they are typically scattered, incomplete, and sometimes appear coincidental. It is much more useful to consider that many plan actions specifically identify the need to revise and update Title 19 to implement the plan, but any detailed assessment of these connections, knowing that parts of Title 19 are nearing 60 years of age, means that this exercise is nearly fruitless. Instead, it is much more useful to consider how many plan actions are dependent on Title 19 for implementation. General plan language that supports updates to Title 19 is identified in [Appendix I](#).

## Many plans are outdated and do not easily relate to each other.

Planning is the art and science of identifying issues, forecasting change, and creating a vision that moves the community forward in a way that minimizes challenges and risk and maximizes opportunities and community health and wellbeing. Planning is important because it requires a community to assess its strengths and weaknesses, it facilitates conversation and visioning, and it represents a consensus opinion on what the community should be in the future. Good plans also provide guidance on how to implement goals, policies and actions.

Plans can have a short-range or a long-range focus. This focus is best expressed in the plan's vision statement. Short-range plans are typically strategic dealing with a limited number of goals or topics which have a quick implementation period. Long-range plans typically have a vision statement set on a horizon of at least 20 years. Goal statements and objectives are intended to provide long-range guidance on how the vision can or should be accomplished. Actions, or strategies, which often accompany goals and objectives may be short, medium, or long-term in

their reach. Some may be ongoing with no need to stop doing whatever the action indicates. For example, coordinating land development plans between jurisdictions is typically an action that is never intended to be complete.

A misunderstood element of long-range plans is that they only need to be updated when they approach their plan life. So, under this scenario an update to a 20-year plan would likely not begin until plan year 18. When citizens and leaders involved in plan-making feel like the opportunity to get an action, or project, in the plan will occur only once every 20 years there can be a rush to throw everything in, especially if the plan vision or goals is overly broad. These plans often end up with very long lists of actions and projects that are a mish-mash of simple, relatively easy items alongside difficult, relatively expensive items. They become a wish list of sorts rather than a well thought out guide for moving the community forward.

The attempt to provide guidance for implementation by prioritizing long action and project lists often ignores the interrelatedness of decisions and actions. For example, in such a plan the community might feel that poor street conditions are the more immediate problem, rating rebuilding or repaving as a top priority. Another action such as oversizing utility lines to facilitate future business development is important to a large group of people, but is thought to be less urgent than the street condition and rated at a lower priority. Based on plan ratings alone the inclination would be to fix the street then deal with the utilities. However, what the ratings don't relate is that the utilities that need to be oversized run underneath the street that needs to be fixed. A fiscally practical approach would be to take care of the utility lines and then fix the street. Approaching it from the other direction means that either the utility will need to dig up the new improved street, or the resistance to damaging the new street delays or kills the utility action.

All 11 required plans have been adopted, but only three plans have been adopted or updated within the past ten years (as evidenced by the list below). One plan, the Moloka'i Plan, has a draft update before County Council for consideration of adoption.

- The Countywide Policy Plan was adopted in 2010.
- The Maui Island Plan was adopted in 2012.



- The Hāna Community Plan was adopted in 1994.
- The Kahoʻolawe Community Plan was adopted in 1995.
- The Pāʻia-Haʻikū Community Plan was adopted in 1995.
- The West Maui Community Plan was adopted in 1996.
- The Makawao-Pukalani-Kula Community Plan was adopted in 1996.
- The Kīhei-Mākena Community Plan was adopted in 1998.
- The Wailuku-Kahului Community Plan was adopted in 2002.
- The Lānaʻi Community Plan was adopted in 2016.
- The Molokaʻi Plan was adopted in 2001 and is currently in the process of being updated.

Based on our understanding, the lag in plan updates and plan-making in general is a function of staffing and process. MCC 2.80B requires extensive public process, which should be commended, but this process requires a tremendous amount of staff time. Long-Range Planning has been challenged to keep pace with what is needed. Extended adoption processes, which may take 3+ years, also consume staff time that could go towards plan-making. Extended approval processes may also mean that some elements of the draft plan are obsolete by the time the plan is approved.

### Vision is lost in the amount of plan material.

While there are vision statements in each plan, the vision for land development is lost in the excessive volume of plan material. There is no overarching vision for Maui County land use or placemaking. Understanding how the plan actions translate into changes in land development regulations is difficult. This applies specifically to Titles 18 and 19 but includes other regulations with land development impacts. Policy plans such as the Countywide Policy Plan are typically not set up to contain this type of information but could easily be transformed into an umbrella vision for how land will be used and developed for the next 20 years.

### The role of the Maui Island Plan is unclear.

The audit team's understanding is that the Maui Island Plan was initiated to serve as an island-wide guide to development decisions. One of the

original intents of the Maui Island Plan was to help plan for and coordinate issues such as highways, wastewater, and water service. This seems to be lost in the plan vision itself. Since the plan was adopted much later than Maui's community plans, it is also unclear how this plan works with, supersedes, or should influence the community plans. It does contain a good vision for land use and the development of land but remains confusing to most users as reported clearly and consistently by stakeholders during meetings and through the survey.

### Maui is auto-centric and there is no requirement to build complete communities.

Like most communities in the U.S., Maui's land development patterns require automobile transportation for most residents and visitors. There is much to be gained by building complete communities where most daily activities can be accomplished within a reasonable and safe walking, biking, and transit distance. This means not only complete streets implementation but ensuring that the mix of land uses within these areas is sufficient to meet this goal. The ability to walk, ride a bike, or use some other form of active transportation (transportation that relies principally on muscles rather than vehicles) is a growing concern across the country. The lack of such opportunities is also a growing complaint in Maui.



Example of separated bike lane and wide pedestrian sidewalks in Missoula, MT.

## Interim and stacked zoning produce undesirable outcomes.

Interim zoning was intended to apply only until a comprehensive zoning code could be adopted, but some interim zoning has never been replaced. Both interim and stacked zoning permit a broad range of land uses that were originally intended to provide flexibility and enable a significant number of uses for property owners. The reality, however, is that interim zoning does not protect residential land uses that are the most common. In addition, although it is older than other zoning districts, the term “interim zoning” conveys a sense of impermanence and instability. Stacked zoning is a discredited zoning method that undermines community character. Because “stacked zoning” allows for often conflicting land use and development patterns, it does not ensure quality development. For Maui’s industrial zones where stacked zoning is prevalent, this means they may not be developing in ways that support industrial investment and growth.

## Uses in historic buildings face obstacles related to parking and signage.

Historic buildings throughout Maui are often in community centers which, when built, were largely accessed by walking or means other than personal automobiles. With automobiles came parking and eventually zoning codes that mandated minimum parking standards. Infill development and the redevelopment of historic or aging structures also run into roadblocks when reviewed under the current requirements of Title 19. Although the minimum standards were usually adopted to address new developments, in Maui they also apply inappropriately to historic structures and community centers. These building and site standards can make reuse of historic structures difficult and, over time, cause the quaint, walkable areas to be surrounded or replaced by surface parking.

Likewise, signage standards normally intended to serve new development don’t always work well in historic centers or relate well to historic building design. These issues make current sign requirements a challenge for many business owners particularly in the historic districts of Lahaina and Wailuku.



Parking and signage in the historic community of Makawao.

## Traditional Hawaiian land use practices and buildings are not evident.

Virtually every official Maui planning document mentions a desire to promote traditional Hawaiian land use practices and buildings. This goal is not being achieved and there is little in modern development patterns or structures that reflects it. While replicating ancient ahupua’a with their self-sustaining reach from the mountains to the sea is difficult, there are aspects of this practice that may inform planning practice and be reflected in the zoning code.

## There is a backlog of enforcement issues.

Zoning standards are only good if implemented. Implementation is a result of enforcement either through administrative practices that ensure willful compliance or enforcement actions to address violations due to ignorance or willful non-compliance. These “back-end” types of enforcement require a commitment of staff to monitor and act. When the num-

ber of violations exceed staff capacity to address them, the result is a backlog. Staff capacity is affected not only by the number of staff dedicated to enforcement, but the complex practices and procedures they must administer to reach compliance.

### **Short-term rental regulations are burdensome; there are many illegal rentals.**

Maui has been inundated with short-term rentals. As a result, the county developed a permitting program to provide a regulatory framework to help ensure neighbors and communities are not overly impacted. This program, while well-intentioned, has created an inordinate amount of work for staff, so much so that it is taking up a disproportionate amount of staff resources. It is also viewed as a long and daunting process that results in what is suspected to be many short-term rental owners choosing to ignore the regulation and remain unpermitted.

### **There is little contextual design or placemaking.**

Except for project districts, of which there are many, and the Maui Research and Technology Park district, there is little in Title 19 that identifies or encourages the many interrelated elements that work together to create “place.” Project districts also do not necessarily fully address place-making. Maui is home to many unique communities and places. The county should make sure that its zoning code supports and encourages the continuation of the elements that make these places unique. Some development, for example in Wailuku and Kahului, is virtually indistinguishable from mainland cities impacted by 20th century urban development and suburban sprawl. Without concerted effort, the character of plantation towns, villages, and historic centers will be lost.

### **Affordable housing and climate change need to be addressed.**

Two issues continually presented themselves in the audit process: affordable housing and climate change. These are obviously two different issues that require different strategies. Maui County currently has an affordable housing strategy that operates outside the regulatory framework of Title 19. Evidence suggests that this program has had limited success.

Affordable housing goals and incentives need to be integrated into Title 19 in a way that makes this issue an integral part of land use decisions.

Climate change and climate adaptation are evolving issues that should inform and impact land use decisions and regulations. The State of Hawai‘i is currently creating a climate adaptation strategy that local governments will need to implement. The issue of climate change is currently not addressed in Title 19.

### **Agricultural zoning practices aren’t working.**

The intent of agricultural zoning is to protect agricultural land while allowing certain agricultural-related uses and structures such as barns, greenhouses and farm dwellings. The reality is that practices such as agricultural subdivisions are allowing non-agricultural uses that may threaten adjacent bona fide farm operations. In addition, the required farm plan is an exercise that requires much staff and applicant time but has little impact on ensuring ongoing farming operations.

### **Processes are not clear and transparent.**

The most effective codes have clear and transparent processes. Title 19 contains a patchwork of processes scattered throughout the code, as opposed to logically and thoughtfully arranged. Some processes appear to be related to rulemaking that is not incorporated into the code. An emerging best practice is to use flow charts or other diagrams either within the code or a code companion (e.g. users guide, pamphlets, webpage resources, etc.) to explain and graphically display processes. An essential element of good customer service in the permitting process is not only having clear and transparent processes but using that information to manage expectations for how long it may take to go from application to decision. By mapping its processes and procedures Maui County may find ways to consolidate discretionary permits. With more than 60 different types of permits possible today in Maui County, the county exceeds, sometimes greatly, what similarly-sized communities administer. Consolidation does not mean the county will lose authority, rather it provides a possible way to have a more efficient and easier to understand program.



### Text and maps are difficult to read and access.

As technical documents, zoning codes are typically less than engaging and certainly aren't exciting. However, they can be made easier to read and use. Title 19, for example, is rife with legalese (some of which may be necessary), complex sentences and wordiness. It is largely devoid of the tables and illustrations that make difficult zoning concepts easy to understand. Currently, the county is in the process of digitizing its zoning maps. Existing paper maps are difficult to access and to understand without significant, in-person staff support in translation.

### There is excessive discretion in rulemaking.

The audit team discovered that there are more than 600 pages of rules that apply to Title 19. This is undoubtedly attributable to the fact that Title 19 as it is currently written is outdated and difficult to apply without a lot of interpretation and additional explanation.

Wailuku and 'Āo Valley



# **RECOMMENDATIONS**

The following recommendations are the result of the review and analysis conducted by the audit team, discussions and feedback from stakeholders, and refinement of draft recommendations based on input from Trip 2. The recommendations and their associated best practices offer Maui County a roadmap of improvements to be made in the rewrite of Title 19. The six main recommendations and their components encompass key actions necessary for a successful rewrite of the zoning code and administration of a strong program rooted in the plan-code relationship. At the conclusion of this report, there are seven appendices which are referenced throughout the recommendations which follow. These include:

**Appendix I. General Plan Language Supporting Title 19 Updates**

**Appendix II. Summary List of Recommendations**

**Appendix III. Sample Project District Organization**

**Appendix IV. Practical Advice for Code Writing**

**Appendix V. Recommendations by Section of Current Code**

**Appendix VI. Example Table of Contents**

**Appendix VII: Summary of Best Practices**

## **RECOMMENDATION #1: CREATE A SIMPLIFIED, HYBRID CODE**

There are four basic types of zoning codes. The most common and oldest type contains use districts intended to address incompatibilities by segregating and isolating different types or classes of uses. This type is referred to as Euclidean zoning in homage to the landmark zoning case *Village of Euclid v. Ambler Realty Inc.* argued before and decided by the U.S. Supreme Court in 1926 which established zoning as a legal land use practice. The second type of zoning code is a performance-based code. In this approach sets of criteria and rankings establish performance criteria as an alternative to use districts in deciding what is permitted where. The third type of zoning code was introduced in the 1990s and became a movement in the 2000s and is referred to as form-based zoning. In its original approach, form-based zoning established the form of development as the paramount concern and was silent on or seldom considered uses as a criterion for approval. The fourth type of zoning code is referred to as a hybrid code because it integrates characteristics from two or all three of the other types of codes. Typically, hybrid codes use a Euclidian framework of use districts along with form and often performance criteria to create standards for development.

Hybrid codes attempt to maximize the benefits of different zoning approaches while minimizing the disadvantages or challenges each type is known for. For example, Euclidian zoning with its focus on use rather than form and its separation and isolation of uses into districts is widely blamed for urban dysfunction and can be quite inflexible. Its format, however, is very familiar to officials, developers, and decision-makers and for that reason is thought to be easy to administer and understand. Performance-based zoning is known to be very complex and difficult to use, but very flexible and focused on important criteria. Form-based zoning is prescriptive and graphically rich but is often described as too subjective and staff-intensive.

There are many specific steps related to this recommendation as outlined in the following sections.



## **Reduce the number of single purpose districts, ensure that daily needs can be met within walking distance or by transit, consolidate project districts whenever possible, and create inclusive, complete communities.**

Districts should be straightforward and implement the county's plans, but they should also create community. Many of the current districts were created to address a single use. Some districts, such as those used for Interim and stacked zoning, allow too many dissimilar uses that may reduce investment confidence and create a sense of chaos or, at best, a lack of cohesive, related community. Alternatively, well-thought-out mixed-use districts allow for a range of different yet complementary uses. These uses work together to build community by providing opportunities to live, work, play, shop, receive services, and otherwise function within a geographic area that is walkable, bikeable, and capable of being served by public transit. A quick example of how project districts might be consolidated is included in [Appendix III](#). The number of project districts is likely a reflection of the lack of a comprehensive update of Title 19 to address plan implementation. If your code is working properly, fewer project districts should be required.

## **Develop comprehensive context-sensitive design standards.**

Maui is home to unique and quaint communities and places whose physical forms are not supported, protected, or encouraged by Title 19. The development of design standards intended to reinforce these characteristics is often called place-making. Design standards are normally grouped into sections that address site design, building design, and infrastructure. They should be as objective as possible and appropriate to most potential developments. A waiver process integrated into code administration would work to create flexibility to address unforeseen options and alternatives and prevent the need to amend the standards to permit desirable but otherwise "non-compliant" applications that meet the intent of the regulations.

## **Create an interactive online digital code and zoning map.**

The digital age provides Maui the opportunity to create an internet-based zoning code and maps. Using the power of digital PDFs or similar non-pro-

prietary formats, Maui can have a code that is easily searchable, contains hotlinks to sections, cross-references, and definitions, and is easily navigable by novice internet and code users. The county is in the process of digitizing its zoning maps and making them accessible online. It is recommended that future iterations contain metadata on entitlements such as variances, special permits, waivers, and rezoning conditions.

## **Simplify code language.**

Zoning codes are full of planning jargon, legalese, and often unnecessarily wordy or obtuse statements. Title 19 is no exception. To the extent possible, Maui should simplify its code and make it more readable. Details on how this might be accomplished are included in [Appendix IV](#), Practical Tips for Code Writing. Included in [Appendix V](#) is a detailed look at specific recommendations by section of the current code. These recommendations highlight opportunities for making Title 19 simpler, better organized, better written, and easier to understand.

## **Develop a user's guide.**

User's guides are helpful resources for both novice and experienced code users especially when a significantly different new code is adopted. Guides range from relatively short "Here's where things are" to more extensive documents that explain how to make applications, where to look for standards and how to apply them, and detailed process flow charts and helpful hints.

## **Create a unified development ordinance.**

Maui should consider a Unified Development Ordinance (UDO), or unified development code. UDOs typically include zoning, subdivision regulations, and land development-related environmental standards such as floodplain, stormwater, and wetland regulations. Occasionally, they also include sedimentation and erosion control requirements and, in the future, will likely include standards related to relevant climate adaptation strategies. A sample table of contents is included in [Appendix VI](#). It illustrates recommended sections of a new Title 19 and what it would take in terms of new elements to make it a UDO.

## RECOMMENDATION #2: PROMOTE HOUSING CHOICE AND AFFORDABILITY

Maui County is frequently listed as one of the most expensive housing real estate markets in the U.S. This has led to an affordability crisis that is evidenced by the increasing number of single-family homes that are illegally converted to two or more separate housing units. Some of these homes contain as many as five or six separate units and have changed the character of entire neighborhoods where automobiles blanket front yards and the shoulders of local streets and occasionally nearby collector roads. Many factors contribute to this crisis and simple solutions are elusive, but there are many specific steps Maui can take to implement this recommendation. Based on our analyses and experience, the most important of these are outlined below.

### Identify and remove regulatory barriers.

The first step to address the affordability crisis is being aware of current and potential regulatory barriers and eliminating them from the new Title 19. Barriers may include extra or special approvals, unnecessary conditions, unnecessarily large lots, and limited types of housing permitted. A more detailed countywide housing needs assessment coupled with an analysis of housing policy (some beyond the reach of Title 19) would likely highlight such barriers in Maui.

A significant barrier to plan implementation is often the rezoning process. If rezonings are costly, typically result in significant NIMBY (not in my back yard) response, or take a fairly long time to accomplish, many landowners and developers simply choose to do what they can with the zoning they have which often is at odds with the plan's vision. In these cases, Maui County should consider proactively rezoning parcels as a significant first step in plan implementation. While wholesale rezoning to make all land conform to a long-range plan is uncommon, unfeasible, and likely undesirable (plans are oriented toward the future whereas zoning is about the here-and-now), select parcels could and likely should be proactively rezoned to catalyze new development patterns consistent with adopted plans. Some communities have a fast-track rezoning process, or one with fewer obstacles, if a proposed rezoning is consistent with adopted plans. This helps to remove barriers to plan implementation.

Occasionally, concern about regulatory “takings” prevents elected officials from proactively rezoning. It is helpful to remember that true regulatory takings aren’t common and can be eliminated by a well written code. Further, it is helpful to remember that the perceived diminution of value is often only a “potential” value that could be realized if and only when the property is developed a certain way. This value is largely, if not entirely, the result of public expenditures on infrastructure and services. This potential value is usually referred to as a “givings.” Even when zoning on a piece of property limits economic gain to achieve a public purpose, the resulting diminished gain is still usually far greater than raw land without access to public infrastructure and services. In other words, perceived takings rarely nullify or significantly diminish the givings bestowed on the property owner by the public.

### Increase the range of housing types permitted by right.

The second step in addressing the crisis is increasing the range of choices permitted by right. This includes allowing some types of housing that are not specifically accommodated in current regulations. Many of these types of housing are popularly referred to as “missing middle” housing. Missing middle housing refers to a range of housing types in the medium (or middle) density category. These include duplexes, triplexes, quadruplexes, courtyard apartments, bungalow courts, and residential units above shops and workplaces. Some even consider accessory dwellings to fall into this category.

Modern zoning practices have generally accommodated single-family detached and segregated multi-family housing but has limited, discouraged through over regulation, or simply prohibited much of the missing middle housing types that can be integrated into successful mixed residential or mixed-use areas. Many historic areas in the U.S. contain a mix of housing types, including those defined within the missing middle category, that are contributing structures in historic districts.

Providing a full range of housing choice may also allow Maui to address the needs of seniors and younger residents. As the population ages, missing middle housing can provide opportunities for residents to age in place or at least within their neighborhoods. Missing middle housing also provides attractive options for younger generations less enamored with suburban housing and densities.

## Best Practice: Address Missing Middle Housing

Maui County should consider expanding the types of housing permitted in residential and mixed-use districts such as row houses, courtyard houses, duplexes, triplexes, quadriplexes, accessory dwelling units, and tiny houses. Placetype planning and place-based design standards (often form-based or hybrid) can support this approach and ensure it integrates well into the community. A greater range of housing types is being used in communities across the country to expand housing diversity and affordable options.



A stately duplex in Covington, Kentucky

In addition to providing a full range of housing choice within the county, Maui should also consider allowing mixed residential uses by right in most zoning districts. Mixed residential may include two or more types of housing and often include conditions and design standards that help make different housing types and densities work well together.

Finally, in addition to regulatory changes and practices, Maui should consider housing trusts and land banks as part of a comprehensive affordable housing strategy. These are being used successfully in other places such as Massachusetts, Silicon Valley, Colorado, and Chicago. Chapel Hill, North Carolina combined inclusionary zoning and a community land trust to help ensure affordable housing by requiring that ownership of the portion of the development containing affordable units be transferred to the land trust to ensure long-term affordability.

### Reinforce mobility as a key component of affordability.

Sidewalks, bike lanes, and transit stops increase the cost of housing development and, like every other expense related to land development and construction, will impact the price of housing. It is wrong, though, to think of these as expendable amenities rather than the integral mobility elements they are. Transportation costs can have a significant impact on affordability. In fact, it is hard to imagine a sustainable long-term solution to the affordability crisis anywhere in the U.S. that does not include increasing mode choice, creating walkable mixed-use communities, and reducing reliance on personal automobiles. In some cases, it could be argued that developers and builders spend almost as many resources on obtaining entitlements as they do providing mobility options. This appears to be occurring in Maui as well. It is strongly recommended that as an alternative to sacrificing mobility Maui consider expedited approval processes and increased densities as appropriate cost reduction methods.

### Address illegal dwelling conversions sensitively.

Illegal subdivisions of single-family dwellings pose an enforcement challenge: What do you do when there is no affordable place for most of the added families to go? Enforcing the provisions of Title 19 without understanding and having a solution to this challenge could result in greater problems related to homelessness or shifting the burden to other neighborhoods. Using such an approach, the city of Palo Alto made news in



2016 when its actions led to many evictions and a plea for a solution. The city's response was to embrace certain accessory dwellings and pathways to compliance.

Comprehensive solutions to Maui's illegal conversions must be identified and considered, and attention needs to be given as to how any county action will impact neighborhoods, communities, and the residents who need affordable housing. Solutions may need to be neighborhood specific tailored to issues such as lot size, access, safety, and community character. Places to look for possible strategies and solutions include New York City, Los Angeles, and Portland. These communities also face serious affordability problems and have adopted policies to address resulting illegal conversions. These three cities, however, are not likely to be an exact fit for Maui.

The residential parking problems generated by the proliferation of these illegal dwellings is somewhat unique in terms of parking challenges. Inextricably tied to the affordable housing crisis and the auto-centric development patterns on Maui, enforcement of Title 19 parking requirements in these instances may be, at this time, an unreasonable proposition. Until there are working solutions to the housing problem, the county would be advised to focus on promoting alternative transportation modes, public safety impacts, enforcing nuisance vehicle ordinances, and similar administrative strategies that may reduce the number of vehicles, address turning and parking movements, and deal with the occasional inoperable vehicle.



A Google Map street view image of a residential street in Kahului where parking on the shoulders is common practice.

## RECOMMENDATION #3: ADDRESS SPECIFIC USE NEEDS AND ISSUES

During the audit team's review and assessment of Title 19, specific issues and needs were identified that didn't fall neatly under one of the other categories of our review. We have grouped those here along with suggestions on how to address them.

### Title 19 should accommodate and encourage new technology and trends.

The world is changing at a faster and faster pace. Zoning codes are intended to prevent problems, but in this fast-paced world they can create them when they lack the ability to address new technology, new uses, and new ways of building and designing developments and structures. To the maximum extent possible, the proposed Title 19 should embrace current trends and have administrative mechanisms in place to allow the county to adapt as it goes to at least minor shifts and adjustments in the land development and use landscape. For example, distributed energy generation is already a fact in Hawai'i. Title 19 should permit a wide range of small scale energy generation facilities as ancillary if not primary land uses. At some point, Maui will also be faced with addressing driverless cars and unmanned deliveries. Now is the time to brainstorm impacts that may need to be permitted, prohibited, or regulated through Title 19.

### Protect prime agricultural land.

A significant amount of Maui is currently within the state's agricultural land use district. Some of this land has been subdivided into agricultural subdivisions for housing development or small farms containing very limited agriculture production—less than could rightly be considered subsistence farming or a hobby farm. Subsistence farming is defined by the USDA as

*A farming system where the food and goods produced are predominantly consumed by the farm family and there is little surplus for sale in the market.*

This is further refined by multiple dictionaries, like Merriam-Webster, to say

*A “system of farming that provides all or almost all of the goods required by the farm family usually without any significant surplus for sale.”*

A hobby farm such as those profiled in a 2015 article in the LA Times typically produces farm products for sale or trade but as a supplement to another income source and not the main income. Such products may or may not be used by the hobby farm owner. Furthermore, the IRS says that a hobby farm is primarily for pleasure not profit. If Maui’s goal is to preserve prime farmland and encourage farm practices, hobby farms and anything less than full subsistence farming may not fulfill that purpose.

Still, other uses such as agricultural tourism and retail stands can significantly impact adjacent working farms by limiting the use of fertilizers, the activities of animals, and other farm operations on these farms. Maui should consider requesting a district boundary amendment to change developed non-farm property to a more appropriate district such as Rural and redouble its efforts to truly protect remaining farmland by revising its processes and establishing new conditions for subdivision and non-farm use. Maui can also promote easement options such as those acquired by the Hawaiian Islands Land Trust which would ensure the perpetuity of good agricultural land. Looking to the Big Island and zoning examples from the mainland that treat agricultural use and scale differently, by separating wholesale ‘agriculture’ into unique districts or sub districts, may also be a workable solution for Maui County in the long term.

### **Create infill and redevelopment standards.**

### **Create infill and redevelopment standards.**

There is a significant amount of developable land in Maui, some of which is in existing developed areas either as vacant lots or older developed sites that will be redeveloped in the future. Many communities take advantage of such opportunities to increase urban densities needed to support local businesses and to create mixed-use or mixed-residential opportunities. It also makes sense to use infill and redevelopment to maximize use of the land and capture more revenue for existing public facilities such as water lines, sewer lines, and streets. Maui should develop infill standards that promote context-sensitive redevelopment that reinforces community character and adds to the livability of the community.

### **Encourage mixed-use.**

In addition to mixed-use zoning districts, vertical mixed-use development should be encouraged, especially in areas where street level retail, restaurant, and service uses make sense. Upper floor residential as a required or at least strongly promoted component of new commercial development is a vital part of building walkable, vibrant urban spaces.

### **Incorporate landscaping and low impact design into parking and site planning.**

Maui should expand its landscaping requirements, especially for parking lots, to soften development edges, create shade, and reduce the amount of impervious area. Low impact design is a site design technique by which stormwater is handled close to the source creating opportunities for infiltration, reducing stormwater impacts on streams and adjacent properties, and turning stormwater from a nuisance into an amenity.

### **Adopt site design standards to address climate change and sea-level rise.**

Maui should adopt site design standards to proactively address the impacts of climate change, especially those due to sea level rise and shoreline development. The draw of beach-front living and desire for views and access, not to mention topographic and land use constraints and mountainous terrain in other parts of the island, has driven much of the development pressure toward the coastline in high densities. While re-

### **Fix the short-term rental program.**

By most measures, Maui’s short-term rental program is not working well. The new Title 19 should focus on the land use impacts of short-term rentals leaving other licensing issues such as background checks, annual fees, and residency to a program better suited to address them such as business licenses. Maui should also consider a third-party source for monitoring compliance and acquiring data about short-term rentals operating within the county. An example of such a program is Host Compliance.

stricting future development (or redevelopment) in areas that are environmentally sensitive or prone to shoreline erosion is one alternative to addressing this problem, the adoption of site design standards for properties fronting the ocean or in low-lying areas impacted by tidal shifts is also necessary. Enforcing rolling setbacks for ocean-front development, incentivizing buyback programs through transfer of development rights or managed retreat options and adopting design standards for construction are just a few of the options that should be considered as part of the rewrite of Title 19.



An example of a permitted accessory dwelling unit in a residential zone.

## Best Practice: Rethinking Short Term Rentals

Short-term rentals take up the lion's share of permitting review and enforcement staff time for Maui County's Zoning and Enforcement Division (ZAED); this is an indicator that the current structure and administration of this land use activity needs review. Based on best practices in other communities, the three separate permits associated with bed and breakfasts and transient vacation rentals should be consolidated, and the administration and enforcement of these permit applications allocated to a select team of planners or housed within an office separate from the county Planning Department. Options for the latter include Public Works or even Housing, as deemed appropriate. The application process should be streamlined based on actual impacts of the activity and should focus on enforceable benchmarks that can be easily and quickly followed up on by the permitting authority. Such benchmarks could include limiting short-term rentals to certain geographic areas on the island, requiring the owner to live in the dwelling most of each calendar year, or restrictions on the amount of time the rental can occur annually.

It is imperative that the benchmarks be attainable and easily enforced, and that requirements are in place for quarterly reporting where the onus is on the applicant and/or homeowner to verify the short-term rental's status with the county (not the other way around). Additionally, transparency in the permitting process may be attained through outreach activities including open houses for applications, a Q&A portal for questions and publishing reports of violations on the website. San Francisco has an excellent web portal providing this information, and has also established a separate office to deal with short term rentals. Communities including Austin, Texas and Breckenridge, Colorado offer templates for how the county may choose to address short-term rentals and accessory dwelling units within the context of Title 19. The State of California's Accessory Dwelling Unit process is also a model of how to address this complex issue.



## RECOMMENDATION #4: CREATE MULTI-MODAL STANDARDS

There has always been a need to move people and goods within, around, and through communities. The modes of transportation have changed through history and have included foot travel, push carts, horses, wagons pulled by beasts of burden, rickshaws, trains, street cars, cable cars, automobiles, bicycles, and similar conveyances. Moving from one major form of conveyance to another is referred to as a mode shift. For much of human history, communities have relied on many modes of travel. Beginning in the middle 20th Century, however, the primary mode shifted to the personal automobile and many communities lost interest in public transit options.

We now know that providing many ways to move about is vital to a successful, thriving urban economy and a key element of the affordability puzzle in our cities and suburbs. Providing a range of choice is one of the fairest approaches to transportation. Personal automobile travel limits options for the poor, the old, the young, and the disabled. While some see driverless cars as a solution to address the needs of the old, young, and disabled, they should not be the primary solution. Walking, biking, and public transit are important components of a healthy transportation system and provide the opportunity to choose more active ways to get around. Safe, accessible choices to car travel have the dual benefit of reducing traffic and congestion while simultaneously improving public health. Research of current best practices finds that planning and designing communities with multi-modal infrastructure leads to increased physical activity and related health benefits.

Tourism-based economies may especially benefit from a robust transportation network that shifts the mode of travel from rental vehicles to more sustainable modes such as transit, walking, and cycling. Visitors in private automobiles increase congestion, demand for parking, and greenhouse gas emissions that contribute to climate change.

Specific suggestions on how to implement this recommendation are highlighted in the following sections.

### Create graphically rich multi-modal mobility standards.

Maui has a Complete Streets policy which should serve as a sound basis for Title 19's mobility standards. The incorporation of cross-sections and illustrative photographs will be very helpful in helping residents and developers understand the intent behind the standards and the outcomes expected in Maui. Such standards should, at minimum: 1) prioritize pedestrian movement, 2) require bike lanes, 3) require pedestrian, vehicular, and bicycle connectivity between properties, and 4) result in an interconnected mobility framework.

### Reconsider parking standards.

As part of the Title 19 rewrite, significant thought needs to be given to the role, need, and impacts of parking. Considering the trend in mode shifts, the reduction in average vehicle miles traveled, and indications that younger generations are less interested in automobile ownership and travel, many communities have exchanged their parking minimums for parking maximums. Some use both measures to require justification for anything that doesn't meet the criteria.



A parking lot in Lahaina

## RECOMMENDATION #5: REVISE PLAN CONTENT AND PROCESS

Planning is the art and science of identifying issues, forecasting change, and ultimately creating a vision that moves the community forward in a way that minimizes challenges and risk and maximizes opportunities and community health and wellbeing. Planning is important because it requires a community to assess its strengths and weaknesses, it facilitates conversation and visioning, and it represents a consensus opinion on what the community should be in the future.

Maui County's General Plan includes a series of plans that provide both broad and specific guidance for the development of land and infrastructure related to that development as well as the protection and enhancement of cultural and natural resources. The Countywide Policy Plan serves as an overarching guiding document for all areas of the county. The Maui Island Plan provides guidance for Maui Island. On Maui Island, six areas have been designated for community plans. The islands of Moloka'i, Lāna'i, and Kaho'olawe are the subjects of individual island-wide community plans. The Title 19 Audit would not be complete without a review of the county's plans and how they impact the code. Based on this review, the following are suggestions for how the plans could better relate to each other and Title 19.

### Re-envision county plans.

Maui has a well-qualified, professional, and highly competent long-range planning staff (and staff in general) and thoughtful recent plan updates, but plan-making should be re-envisioned to create a cleaner, smoother, faster, and more impactful process and product. Specifically, we recommend that Maui consider each of the following recommendations.

- Create a clear relationship and hierarchy between plans.
- Reimagine the Countywide Policy Plan as a countywide land development plan (or a plan that contains such an element) that provides clear direction for countywide regulatory policy and an overall land use vision for Maui.
- Reimagine the Maui Island Plan as an overarching community plan

with subareas that are fleshed out in detailed sub-area plans. These plans may be neighborhood, commercial or industrial center, city, or corridor plans. Each of the community plans on Maui Island serve as examples of possible geographies. As sub-areas, these plans would not repeat the Maui Island Plan or the Countywide Policy Plan; rather, they would augment it through greater detail and focus on character and sense of place.

- Create and focus on content appropriate to plan scale and purpose.
- Use Place Types and Character Areas to help form cohesive policies and strategies to protect sense of place and culture.
- Convey information graphically whenever possible so that the reader can see the intent (more recent plans do a better job of this overall).
- Shorten the time frame for community plan implementation elements so that they are more focused on short-term actions tied to long-range goals and visions (five years would be a good target).
- Remove cost estimates from plans.
- Make sure each plan contains clear, specific recommendations for changes needed in Title 19 to implement the plan; and
- Involve all relevant departments and divisions in the planning process as integral stakeholders.

### Focus community plans on strategic issues and unique community character.

Community plans should be distinguished from overarching general plans by their focus on very specific community elements and those aspects that make them different or unique from other places. Current plans contain quite a bit of material that could easily apply to other areas of Maui. During the planning process, it would be helpful to separate those broader countywide actions from ones strictly relevant to that community. Recommendations for countywide policies that arise as part of a community planning effort should go to Council separately as recommended amendments to the Countywide Policy Plan. Theoretically, community plan and Countywide Policy Plan amendments could move through the process together, or as much in tandem as possible given adoption constraints.





Each island community such as Lānaʻi City has its own unique character.

### Plan for people, complete communities, and livability by creating and reinforcing a sense of place.

Make sure that plans, especially community plans, are focused on creating complete communities with people and livability at the center of every goal. Population centers should be predicated on the ¼ mile walking radius and contain most of the services and land uses necessary for residents to meet daily needs as well as multi-mobility networks that encourage a variety of transportation choices. Also, rather than segregating land uses look for synergies and natural connections between different use categories.

### Anticipate and plan for disruption.

We live in an age of disruption where technology especially is changing how we live, communicate, and move. To the extent possible, plans should include forecasts of disruptive technologies and industries, their possible benefits and burdens, and some ideas for how to respond. Recent examples of disruptive practices that have changed Maui include the rise in the sharing economy such as Uber and AirBnB, smartphones, and distributed energy generation. Perhaps the greatest disruption occurring in Maui is climate change. Plans should begin identifying current and future adaptation needs and policies for how to address them.

### Speed up plan-making.

Somehow Maui needs to find a way to reduce the amount of time it takes to create and adopt plan updates. With the current number of plans (11) on a 20-year cycle, the county should be adopting a new plan or update an average of at least once every two years just to stay current. If the county adopts the strategy of amending implementation elements every year or two for community plans, creation and adoption times should be measured in months, not years.

### Reconsider plan implementation.

Chapter 2.80B.070 in Title 2 dictates the contents of the community plans and mandates some of the implementation criteria such as estimated costs and funding sources, added in 2004, which are out of place in a long-range planning document. These are elements more at home in a short-range plan such as a Capital Improvements Plan, Capital Facilities Plan, strategic plan, or construction plan.

In our fast-changing world, any cost estimates extending beyond a few years are more guesswork than reliable numbers. The Molokaʻi Community Plan has a horizon of 2035 and stated costs that will become less accurate and relevant with each passing year. The problem of including costs in the community plans is that:

- Cost estimates are based on assumptions that aren't included in the plan.
- Even if costs are accurate when they are adopted in the plan, unless they are updated annually the ability to assess the cost of undertaking



one action versus another becomes less and less accurate over time.

- Many costs are impossible to predict until detailed studies outside the scope of the plan have been completed. This may be why many actions have “TBD” in the cost column.
- Actions may be co-dependent, and it could be nearly impossible to predict costs for these actions independent of each other.
- Cost estimates are one-sided: they only include an estimate of what it would take to complete an action. They are not reconciled with the costs related to inaction. Much of planning is about reducing potential cost burdens associated with inaction or poor decisions.
- Costs related to inaction may increase faster than the costs associated with action, meaning the county should move faster than it might otherwise be inclined to act. But this is not reflected in the matrix and is often impossible to quantify.
- Due to the inherent flaws with estimating costs related to actions in a long-range plan, the exercise can cause far more harm than good if they result in inaction or delayed action.

Associating costs with recommended actions can breathe some reality into what may be a very unrealistic ask by citizens or citizen groups. A different strategy of using long-range vision statements and goals coupled with short-range action plans that can be easily monitored and amended annually, is recommended. A 5-year action plan, like a capital improvements plan (CIP), could have realistic cost estimates, would tie to the CIP, could help focus community effort, and could keep the plan relevant in our fast-changing world.



## RECOMMENDATION #6: IMPLEMENT ORGANIZATIONAL CHANGE

Through the audit process and based on our analysis of the administration and enforcement of Title 19, it became apparent that a significant obstacle preventing optimal outcomes lies in the county's approach to and reaction regarding land development issues and change. Specifically, the Orion Planning + Design team concluded that there is a lack of trust, an inability to respond to change quickly, a lack of clear consensus and vision regarding land development, and an absence of a strong imperative for internal teamwork. These issues are not unique to Maui, but when they occur they are often accompanied by dysfunction, delay, and missed opportunities. Maui can focus on building trust and organizational capacity as outlined below, as part of the Title 19 rewrite (although much is needed beyond this process to fully address the issues) and position itself as a model in Hawai'i and across the nation on issues related to climate change adaptation, affordable housing, and economic restructuring.

### Rebuild trust with the community and among county departments.

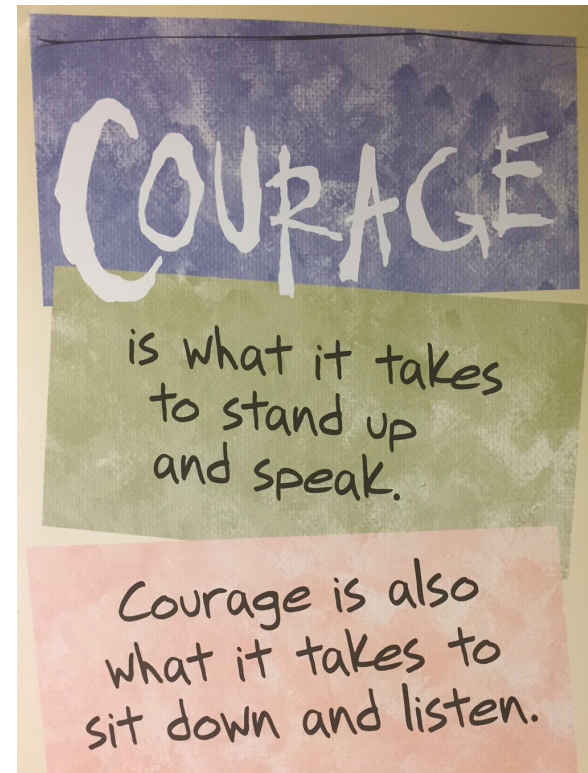
The audit process revealed a lack of trust between divisions, between departments, between staff and decision-makers, between government and citizens, and between citizens and the development community. Trust is essential in organizations like Maui that need creative strategies and solid teamwork to respond to uncertainty and change. Stephen Covey writes in his book **Speed of Trust** that when organizational trust declines the speed of change within that organization goes down and the costs related to the change needed go up.

What that means for Maui or any government faced with guiding a community through accelerated change is that delay and dysfunction have compounding consequences on budgets and quality of life. Excessive traffic, housing affordability issues, loss of community character, environmental degradation, and man-made climate change are just some examples of issues that can result from delayed action. Solving these problems will prove far more difficult than preventing them and the more entrenched they become the more difficult and costly they will be to solve. In summary, Stephen Covey concludes that, "The ability to establish, extend,

and restore trust with all stakeholders—customers, business partners, investors (think tax payers), and coworkers—is the key leadership competency of the new, global economy." Although Covey's book is written with business rather than government in mind, its principles apply to government operations equally.

While there may be many reasons for the distrust noted, it is evident that a significant part of the problem rests with the plan and code process. The audit team concluded that the following factors contribute to the lack of trust:

- The plan-making process is broken—the code is not implementing plans and the public investment (time and expectations) in plan-making is driving dissatisfaction and distrust.
- The role of plans is unclear—because the code is not implementing plans, some groups argue that the plans should be the primary regulatory tool.







- Administrative roles are unclear—this is mostly an internal issue, but results in confusion and frustration both internally and externally.
- The rule-making process is not transparent—there are too many external rules and they are not easily accessible or necessarily understandable to the public.
- Title 19's outdated regulations and confusing text create suspicion and misunderstanding—clear, plain codes establish and help to manage expectations.

Maui is in a strong position to use the Title 19 rewrite process to reestablish strong and productive working partnerships characterized by a common mission and understanding.

### **Be a leader in affordable housing strategies.**

The audit team could find no best practices that holistically address this issue. The team lead's discussions with economists and urban thought-leaders Richard Florida and Ryan Avent as well as the American Planning Association research staff revealed that affordable housing has not yet been successfully addressed in a tourism-based economy in the U.S. To create a successful affordable housing strategy, Maui will need to seize the opportunity to explore new ideas and perhaps become a model for other communities facing similar problems. To develop a solid strategy, the county should call upon experts in housing, finance, economics, and tourism and gather advice from communities that are having some success addressing at least part of the housing problem.

### **Create a clear and transparent rule-making process.**

Rule-making is a legitimate and necessary action to help Maui implement its zoning program. However, such a process should be used sparingly and be viewed as temporary. Most rules should eventually make their way into the code through the code amendment process to maintain transparency, clarity, confidence, and efficiency in the regulatory process. Before that, rules should be written simply, used sparingly, footnoted in Title 19, and made accessible online.

## Clarify administrative roles within and between departments and make sure these roles are reflected in Title 19.

Title 19 language is often confusing about who does what and when. This is a relatively simple fix, but a significant one. During the zoning rewrite process administrative roles should be discussed and decided and then fully described within the code. See [Appendix V](#), Recommendations by Section of Current Code, for more detail.

## Designate a bike-ped coordinator.

If Maui wants to promote active transportation, the county should have a staff person devoted to planning for, monitoring, and overseeing bicycle and pedestrian networks.

## Create a technical review committee.

Technical review committees (TRC) are commonly used local government bodies created to work as a team in the review and permitting of land development and site plan proposals. They are often staff only committees not subject to open meetings laws. They include members from all divisions and departments involved in the process and sometimes include staff from outside agencies such as Hawai'i DOT. The greatest benefit of TRCs is the coordination of reviews and review comments which can lead to more efficient and faster processes. They are typically only used for more complicated applications such as subdivisions, large residential developments, and commercial and industrial developments that require detailed review, special approvals, or formal recommendations by staff. The planning department normally chairs and coordinates the work of the committee.

## Complete a customer service audit and benchmark and track progress.

The Maui County Council commissioned a review and assessment of the planning department by Zucker Systems in 2006; much of this information is still relevant. Building on this report, the Department of Planning could complete an audit of its customer service functions ranging from facilities to processes, accessibility to materials, and staffing. This is an important action to take to determine if other changes could significantly

improve how Maui's citizens are served when they are participating in the land development and permitting process.

## PHASING

During the presentation of draft findings and recommendations, several individuals expressed doubt that Maui would be willing to undertake a complete rewrite of Title 19. It was suggested that the audit team provide its recommendations for how to phase in the changes so that the code could be rewritten over time in smaller sections.

Zoning codes are typically organized in the following major categories:

- Authority, jurisdiction, and general requirements
- Districts and standards
- Administration and enforcement
- Definitions

Codes that follow this model can be amended in these discreet parts. Title 19 cannot be neatly divided into these categories. Years of amendments have resulted in the location of definitions, administration, enforcement, and standards in many different parts of the code. Consequently, it is not feasible to find a good dividing line to facilitate phased updates. Updating Title 19 in phases would not save money or time. It would likely be very confusing for citizens and staff and could result in unintended conflict or dysfunction between code elements. For these reasons, the audit team maintains that the best approach for Maui is a single, comprehensive rewrite. However, should the county wish to pursue a phased approach, the team recommends creating an amendment schedule that roughly aligns with the four areas noted above.