

COUNCIL OF THE COUNTY OF MAUI
PLANNING COMMITTEE

April 1, 2011

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning Committee, having met on March 14, 2011, makes reference to the following:

1. County Communication No. 09-247 from the Planning Director, transmitting comments and recommendations from the Lanai, Maui, and Molokai Planning Commissions on a draft bill entitled "A BILL FOR AN ORDINANCE TO ESTABLISH SOLAR ENERGY FACILITIES AS PERMITTED USES IN THE AGRICULTURAL ZONING DISTRICT", attached to Resolution No. 08-95 (adopted on November 7, 2008).

The purpose of the draft bill is to permit solar energy facilities in the Agricultural Zoning District.

2. Committee Report No. 11-10, from your Planning Committee recommending that a proposed bill entitled "A BILL FOR AN ORDINANCE TO ESTABLISH SOLAR ENERGY FACILITIES AS PERMITTED USES IN THE AGRICULTURAL ZONING DISTRICT" be passed on first reading and that County Communication No. 09-247 be filed.

Your Committee notes that the Council recommitted Committee Report No. 11-10 to your Planning Committee at its meeting of March 4, 2011, because of concerns relating to the bill's requirement that solar energy facilities occupy no more than 25 percent of the lot.

Your Committee further notes that the County legislation was introduced based on authority granted to the counties by Act 31 (2008), which had the stated purpose of including "a solar energy facility as a permitted use within the agricultural district on land with soil classified D or E." Under the Land Study Bureau's detailed land classification, Class D and E lands are considered lands with low agricultural productivity. Act 31 (2008) also states: "The legislature further finds that allowing solar energy facilities to be

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built on marginal agricultural lands may have more beneficial effects for Hawaii's economy, environment, and energy security than leaving such lands unused."

Your Committee determined that a solar energy facility covering only 25 percent of a small lot may not produce enough power to generate a worthwhile income for the property owner. Therefore, your Committee recommended that the allowable lot coverage of a solar energy facility be increased from 25 percent to 35 percent.

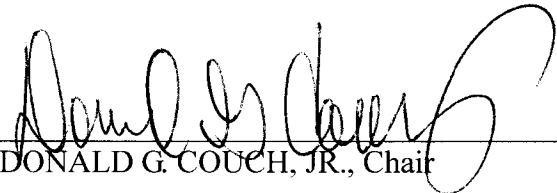
Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading. Committee Chair Couch, Vice-Chair Baisa, and members Cochran, Mateo, Pontanilla, Victorino, and White voted "aye".

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee's recommended revisions.

Your Planning Committee RECOMMENDS the following:

1. That Bill No. _____ (2011), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE TO ESTABLISH SOLAR ENERGY FACILITIES AS PERMITTED USES IN THE AGRICULTURAL ZONING DISTRICT" be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That Committee Report No. 11-10 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



DONALD G. COUCH, JR., Chair

ORDINANCE NO. _____

BILL NO. _____ (2011)

A BILL FOR AN ORDINANCE TO ESTABLISH SOLAR ENERGY FACILITIES AS PERMITTED USES IN THE AGRICULTURAL ZONING DISTRICT

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

SECTION 1. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Solar energy facilities" means any devices, elements, or substances, or any combination of devices, elements, or substances, that rely upon direct sunlight as an energy source, including those that collect sunlight for use in:

1. The heating or cooling of a structure or building;
2. The heating or pumping of water;
3. Industrial, commercial, or agricultural processes; or
4. The generation of electricity."

SECTION 2. Section 19.30A.050, Maui County Code, is amended to read as follows:

"19.30A.050. Permitted uses. The following uses and structures shall be permitted in the agricultural district provided they also comply with all other applicable laws:

- A. Principal Uses.
 1. Agriculture;
 2. Agricultural land conservation;
 3. Agricultural parks, pursuant to chapter 171, Hawai'i Revised Statutes;
 4. Animal and livestock raising, including animal feed lots and sales yards;

5. Private agricultural parks as defined herein;

6. Minor utility facilities as defined in section 19.04.040, Maui County Code; [and]

7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance[.]; and

8. Solar energy facilities, as defined in section 19.04.040, Maui County Code, and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than thirty-five percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

B. Accessory Uses. Uses that are incidental or subordinate to, or customarily used in conjunction with a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which shall not exceed one thousand square feet of developable area;

2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following three criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F [fillings] filings;

b. Provide certification by the department of water supply that agricultural water rates are being paid if the subject lot is served by the County water system; or

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Moloka'i and Lana'i, the owner or lessee of the lot shall meet both of the

criteria provided by subsections 19.30A.050.B.2.a and 19.30A.050.B.2.b;

3. One agricultural products stand per lot, for the purpose of displaying and selling agricultural products grown and processed on the premises or grown in the County, provided that said stand shall not exceed three hundred square feet, shall be set back at least fifteen feet from roadways, shall have a wall area that is at least fifty percent open, and shall meet the off-street parking requirements for roadside stands provided by section 19.36.010 of this code, except that paved parking shall not be required; stands that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;

4. Farmer's markets, for the growers and producers of agricultural products to display and sell agricultural products grown and processed in the County; structures shall have a wall area that is at least fifty percent open; markets shall operate only during daylight hours and shall not operate on parcels less than ten acres; the director of public works may impose additional requirements if a building permit is required for any structures; markets that display or sell agricultural products that are not grown on the premises shall be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;

5. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County;

6. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation;

7. Energy systems, small-scale;

8. Small-scale animal-keeping;

9. Animal hospitals and animal board facilities; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter;

10. Riding academies; if conducted on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter;

11. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking [and] are conducted for commercial purposes on the island of Moloka'i, such uses shall have been approved by the Moloka'i planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection or by subsection 19.30A.060.H shall be prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawai'i Revised Statutes;

12. Except on Moloka`i, bed and breakfast homes permitted under chapter 19.64 of this code that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 schedule F filings; or

b. In compliance with all of the following criteria, provided that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less; and

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or

c. Located in sites listed on the State of Hawaii Historic Register or the National Register of Historic Places.

13. Parks for public use, not including golf courses and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds; and

14. Other uses that primarily support a permitted principal use; however, such uses shall be approved by the appropriate planning commission as conforming to the intent of this chapter."

SECTION 3. Section 19.30A.060, Maui County Code, is amended to read as follows:

"**19.30A.060 Special uses.** The following uses and structures shall be permitted in the agricultural district if a special use permit, pursuant to section 19.510.070, Maui County Code, has been obtained; except that if a use described in this section also requires a special permit pursuant to chapter 205, Hawai'i Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the State special permit shall fulfill the requirements of this section:

A. Additional farm dwellings beyond those permitted by subsection 19.30A.050.B.1;

B. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050.B.2;

C. Agricultural products stands that do not meet the standards of subsection 19.30A.050.B.3;

D. Farmer's markets that do not meet the standards of subsection 19.30A.050.B.4;

E. Public and quasipublic institutions which are necessary for agricultural practices;

F. Major utility facilities as defined in section 19.04.040, Maui County Code;

G. Telecommunications and broadcasting antenna;

H. Open land recreation uses, structures or facilities which do not meet the criteria of subsection 19.30A.050.B.11, including commercial camping, gun or firing ranges; archery ranges; skeet shooting; paint ball; bungee jumping; skateboarding; roller blading; playing fields; accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit pursuant to chapter 205, Hawai`i Revised Statutes. The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips; motor sports facilities; golf courses and golf driving ranges;

I. Cemeteries, crematories, and mausoleums;

J. Churches and religious institutions;

K. Mining and resource extraction; [and]


L. Landfills[.]; and

M. Solar energy facilities that are greater than fifteen acres."

SECTION 4. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

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