

COUNCIL OF THE COUNTY OF MAUI

**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

October 17, 2014

**Committee
Report No.** _____

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

Chair and Members:

Your Economic Development, Energy, Agriculture, and Recreation Committee, having met on September 30, 2014, makes reference to County Communication 14-215, from Councilmember Don S. Guzman, relating to “Tools to Encourage Agriculture Sustainability.”

By correspondence dated September 11, 2014, Councilmember Guzman transmitted a proposed resolution entitled “REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS”.

The purpose of the proposed resolution is to refer to the Lanai, Maui, and Molokai Planning Commissions a proposed bill entitled “A BILL FOR AN ORDINANCE TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS”.

The purpose of the proposed bill is to amend the zoning standards for agricultural districts (Section 19.30A.030, Maui County Code (“MCC”)), to allow the creation of agricultural subdivisions utilizing one-acre minimum lot sizes when creating an agricultural conservation lot. The intent is to encourage the clustering of smaller lots within a subdivision while preserving a larger, contiguous, “remnant” parcel dedicated to agricultural uses in perpetuity.

Your Committee notes the current language of Section 19.30A.030, MCC, establishes the minimum lot size in agricultural subdivisions of two acres, which has resulted in subdivisions of scattered lots with few large lots available for commercial farming.

The Chair of your Committee noted fragmented agricultural parcels offer less production, making it more difficult to justify the cost of agricultural investment and presenting profitability challenges to developers.

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Additionally, your Committee heard testimony that agricultural-zoned lands are often converted to accommodate urban sprawl, compromising community plans.

Your Committee viewed a computer-generated presentation by Rory Frampton, a land use planning consultant, who explained the proposed bill would provide an important tool for preserving agricultural land that would not change the overall number of lots, density, or the calculation required by the current sliding scale, but would only change the minimum lot size.

A representative of the Department of Planning informed your Committee the proposed bill represents a good progression of the County's intent to protect large agricultural lots, which began with the 1998 enactment of the Agricultural Zoning Ordinance. That ordinance established a sliding scale delineating allowable subdivision density and minimum lot sizes in order to promote and preserve open spaces necessary for the general health and well-being of the citizens of the County. The representative stated the proposed bill would take it to the next step, preserving agricultural lands for large farming and commercial operations.

Your Committee noted the proposed bill would implement objectives of the Countywide Policy Plan which mandates the County to support ordinances, programs, and policies that keep agricultural land and water available and affordable to farmers, as well as the Maui Island Plan which requires the County to provide incentives for landowners to preserve and protect agricultural lands from development.

Your Committee recognized clustering smaller lots together in one portion of the subdivision would decrease the length of roads and shorten the length of utility lines needed to serve the clustered lots, resulting in overall infrastructure cost savings to the subdivision.

Your Committee noted the proposed bill would encourage better land and infrastructure management, helping to maintain Maui County's pristine agricultural landscape.

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Your Committee voted 5-0 to recommend adoption of the proposed resolution. Committee Chair Guzman, and members Baisa, Crivello, Cochran, and White voted "aye". Committee members Carroll and Victorino were excused.

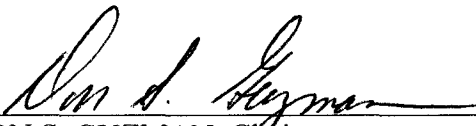
Your Economic Development, Energy, Agriculture, and Recreation Committee RECOMMENDS that Resolution _____, attached hereto, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS", be ADOPTED.

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



DON S. GUZMAN, Chair

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Resolution

No. _____

REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING
COMMISSIONS A PROPOSED BILL TO ALLOW FOR THE CREATION OF
AGRICULTURAL CONSERVATION LOTS


WHEREAS, the Council is considering a proposed bill to amend the standards in the Agricultural Zoning District to allow for agricultural conservation lots; and

WHEREAS, Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended, require that the appropriate planning commissions review proposed land use ordinances and amendments thereto, and provide findings and recommendations to the Council; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That it hereby refers the proposed bill, entitled "A BILL FOR AN ORDINANCE TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS", a copy of which is attached hereto as Exhibit "1" and made a part hereof, to the Lanai, Maui, and Molokai planning commissions for appropriate action, pursuant to Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended; and
2. That it respectfully requests that the Lanai, Maui, and Molokai planning commissions transmit their findings and recommendations to the Council as expeditiously as possible; and
3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, the Lanai Planning Commission, the Maui Planning Commission, and the Molokai Planning Commission.

APPROVED AS TO FORM AND LEGALITY



Department of the Corporation Counsel
County of Maui

ORDINANCE NO. _____

BILL NO. _____ (2014)

A BILL FOR AN ORDINANCE TO ALLOW FOR THE
CREATION OF AGRICULTURAL CONSERVATION LOTS

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

SECTION 1. The purpose of this ordinance is to amend the Agricultural Zoning Ordinance to allow for the creation of agricultural conservation lots with a minimum lot size of one acre. The Council's intent is to provide flexibility in site planning and design to: 1) promote land conservation; 2) preserve agricultural land resources; and 3) maintain district character, consistent with the General Plan. This ordinance is not intended to allow for the creation of lots beyond the maximum lot limit under Section 19.30A.030(G), Maui County Code.

SECTION 2. Section 19.30A.030, Maui County Code, is amended to read as follows:

“19.30A.030 District standards. Except as otherwise provided in this chapter, the following district standards shall apply for uses, facilities and structures in the agricultural district:

A. Minimum lot area: two acres;
B. Minimum lot width: two hundred feet;
C. Minimum yard setbacks: front yards, twenty-five feet; side and rear yards, fifteen feet;

D. Maximum developable area: ten percent of the total lot area. This restriction shall apply to farm dwellings, but shall not apply to any structure or portion thereof [which] that is used to support agriculture, including but not limited to storage facilities, barns, silos, greenhouses, farm labor dwellings, and stables, and shall not apply to utility facilities as permitted by this chapter;

E. Maximum height limit: [Unless] unless otherwise provided for in this chapter, the maximum height of any dwelling shall be thirty feet, except that vent pipes, fans, chimneys, antennae and solar collectors on roofs shall not exceed forty feet. Any [nondwelling] non-dwelling structure such as a barn or silo that is over thirty-five feet in height shall be set back one additional foot for each foot in structure height;

F. Maximum wall height: [Walls] walls shall not exceed four feet within the yard setback area as measured from the finished or existing grade, whichever is lower, to the top of the wall as defined herein, except for one utility

EXHIBIT "1"

wall per lot; utility walls shall not exceed seven feet in height and seven feet in width, and shall not obstruct sight distance for roadways or driveways. This does not preclude constructing fences on the top of the wall for safety purposes. The director of public works may permit greater heights of walls as needed to retain earth[,] or water [or both] for health and safety purposes;

G. The maximum number of lots that may be created from a lot, or portion thereof, that is in the agricultural district shall be based on the gross area of the subject lot, which for the purposes of this subsection shall be the tax map key parcel as certified by the real property tax division [on] as of March 1998, as follows:

Agricultural District				
Area of lot (in acres)	Maximum number of permitted lots:			
	2-acre minimum lot size	15-acre minimum lot size	25-acre minimum lot size	40-acre minimum lot size
At least 2 but less than 31	7			
At least 31 but less than 61	7, plus [one] <u>1</u> additional lot for each 10 acres above 31 acres			
At least 61 but less than 92	10, plus [one] <u>1</u> additional lot for each 15 acres above 61 acres; plus ↗	1		
[92+] <u>92 or more</u>	12, plus [one] <u>1</u> additional lot for each 40 acres above 92 acres (not to exceed 14 lots); plus ↗	2, plus [one] <u>1</u> additional lot for each 60 acres above 92 acres; plus ↗	1, plus [one] <u>1</u> additional lot for each 100 acres above 92 acres; plus ↗	[one] <u>1</u> lot for each 160 acres above 92 acres

For the purposes of this subsection, any [lot(s)] lots or [portion(s)] portions thereof that [is] are contained entirely within the subject lot, and [that is owned by the same persons or related corporate entities] with the same ownership as the subject lot, shall be considered a part of the subject lot and shall count towards the maximum number of permitted lots that may be created from the subject lot.

This subsection shall not apply to any lot [which] that received preliminary subdivision approval prior to [the effective date of this ordinance] December 31, 1998, and [which] receives final subdivision approval after [the effective date of this ordinance] December 31, 1998. The subsequent lots resulting from such subdivision shall be subject to this subsection.

H. Agricultural conservation lot. An agricultural conservation lot is any lot zoned in the agricultural district and dedicated for agricultural use, in perpetuity, through a perpetual conservation easement, in accordance with chapter 198, Hawaii Revised Statutes, or through the execution and recordation with the bureau of conveyances of the State of Hawaii or the land court of the State, of a unilateral agreement incorporating such conditions that shall restrict the new lot to the permitted uses set forth in section 19.30A.050 of this chapter. The unilateral agreement shall provide that the conditions shall run with the land in perpetuity and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. The unilateral agreement shall be irrevocable and enforceable by the County, by appropriate action at law or suit in equity, against the parties and their heirs, personal representatives, successors, and assigns.

1. An agricultural conservation lot shall be prohibited from changes in zoning, consolidation, or further subdivision, except as provided for in section 19.30A.040(B).

2. The director shall maintain a list of all agricultural conservation lots. The list shall be made accessible through the County website and updated immediately upon the creation of any new agricultural conservation lot. On or before September 1 of each year, the director shall submit to the council a report identifying all agricultural conservation lots created in the County.

3. Notwithstanding the foregoing provisions of this section, any subdivision that creates an agricultural conservation lot shall be subject to the following district standards:

a. Minimum lot area: one acre, provided that:

i. The proposed subdivision is permissible pursuant to section 19.30A.040(A);

ii. The minimum area of the agricultural conservation lot is at least seventy per cent of the subject lot area when the subject lot area is at least ninety-two acres, or sixty per cent of the subject lot area when the subject lot area is less than ninety-two acres; and

iii. The design of the subdivision incorporates best management practices as established by rule, pursuant to section 19.30A.120, that support the purpose and intent of the agricultural district.

b. The maximum number of lots that may be created from a lot, or portion thereof, shall be based on the gross area of the subject lot, which for the purposes of this subsection shall be the tax map key parcel as certified by the real property tax division as of March 1998, as follows:

<u>Agricultural Conservation Lot Subdivision</u>	
<u>Area of subject lot (in acres)</u>	<u>Maximum number of permitted lots:</u>
<u>At least 2 but less than 31</u>	<u>1 lot for every 2 acres (not to exceed 7 lots)</u>
<u>At least 31 but less than 61</u>	<u>7, plus 1 additional lot for each 10 acres above 31 acres</u>
<u>At least 61 but less than 92</u>	<u>11, plus 1 additional lot for each 15 acres above 61 acres</u>
<u>92 or more</u>	<u>15, plus 1 additional lot for each 40 acres above 92 acres (not to exceed 17 lots); plus 1 lot for each 60 acres above 92 acres; plus 1 lot for each 100 acres above 92 acres; plus 1 lot for each 160 acres above 92 acres</u>

For the purposes of this subsection, any lots or portions thereof contained entirely within the subject lot and with the same ownership as the subject lot shall be considered a part of the subject lot and shall count towards the maximum number of permitted lots that may be created from the subject lot.”

SECTION 3. 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 4. This ordinance shall take effect upon its approval. Any subdivision application that has received preliminary subdivision approval prior to the effective date of this ordinance may be amended to incorporate the creation of an agricultural conservation lot, without the need for a new preliminary subdivision approval, if it otherwise complies with Section 19.30A.030(H), Maui County Code, and other applicable laws.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

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