

**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM B.5
OCTOBER 12, 2021**

Ms. McLean: Chair, one final item of this nature. One final public hearing item, another Resolution No. 21-113, referring to the commissions, a proposed bill to amend Maui County Code Chapter 19.29 relating to the Rural District to prohibit instruments of conveyance from restricting the growing and harvesting of any agricultural crop or product, and once again, Jackie Takakura is handling this. Jacky.

- 5. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting Resolution No. 21-113 referring to the three planning commissions a proposed bill to amend Maui County Code Chapter 19.29 – Rural District, to prohibit instruments of conveyance from restricting the growing and harvesting of any agricultural crop or product. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/128227/Resolution-21-113-proposing-to-prohibit-instruments-of-conveyance-from-restricting-agriculture-in-Rural-district>

Ms. Jacky Takakura: Okay, thank you. Maui Planning Commission. Thanks for your patience, and this is the last one, and I don't have a PowerPoint presentation. This should be pretty quick. The intent of the measure is to stop the prohibition of agricultural uses permitted in the rural districts through deed restrictions in all forms including HOAs, Homeowner's Associations or similar covenants, conditions and restrictions that are known as CC&Rs.

The intent is similar to the existing prohibition on restricting permitted ag uses in the Ag District. So, just as a review, we have State and County Ag...I mean, Rural Zoning, and the purpose of the County Rural District is to provide low density development which preserves the rural character of certain areas to allow small scale ag uses and the keeping of animals and to serve as a transition between standard residential or other urban density development and ag lands.

The State Rural District as defined in HRS 205-2 is intended for areas of land composed primarily of small farms mixed with very low-density residential lots and there's some minimum lot sizes and requirements also. And it's in areas where city like concentration of people, structures, streets and urban level of services are absent and where small farms are intermixed with low density residential units.

So, the Department of Planning supports the protection and diversification of ag operations in the county as an economic engine in the context of food sustainability and in the preservation of the rural character of Maui County. The Department also supports the preservation of permitted uses established by zoning to facilitate the most efficient and desirable uses of land in the future.

We do propose some revisions to the wording of the proposal, and we would like it to say, that any deed, lease, agreement of sale, mortgage or other instrument of conveyance interpreted to contain any covenant or clause that restricts directly or indirectly the growing and harvesting of any ag...agricultural crop or product on lands within the RU.05, RU1, RU2, RU5 and RU10 and County Rural Districts shall be considered invalid and not enforceable and that this section does

not apply to any covenant or clause existing prior to the effective date of the ordinance established in this section. So, that's it, what we have to say. There's a lot more information in the memo report which you received, and you've got four options. You can recommend approval of the proposed bill. You can recommend approval of the proposed bill with the amendments we have, the amendment that we have, recommend denial or you can vote to defer. So, that's it in a nutshell and then we can answer any questions.

Mr. Tackett: Okay, Commissioner Pali, go ahead.

Ms. Pali: Thank you, Chair. Oh, what just happened here? Okay, so I guess my first...I think this is great just let me just put that up there. I think this is great. This is my issue. In years prior to this year and me serving here and going through the mapping and the zonings in other commission meetings, it was confirmed that a lot of...because we weren't, we, meaning as a people, we weren't necessarily managing the zonings prior to it sort of coming into existence, and so a lot of land, and area, land mass in Maui County, if it didn't have a specific use at that time or zoning, then it was just thrown into Ag.

And so, I think my first issue, and then, and what happened, and Director, you can kind of correct me, and so then, so as we were working through these now let's say this piece of property that's never been developed, oh, it's Ag, we gotta preserve Ag, but people weren't understanding the history, that it actually has never been farmed, it was never Ag, it was just sort of thrown into Ag because we didn't really know what to do with it. And so, now there's this sense of, oh, we have to preserve Ag because that was what its intent. That might be the case for a lot of our Ag parcels, but a lot of these parcels that were never addressed, that's actually not the case. So, I think I'm, I'm a little concerned with this language because now we're forgetting the history of why some lots were thrown into Ag, and it wasn't because we thought it was good for Ag, it's just that they didn't have anything else to put it in. So, that's my first issue.

And then the second issue, I love the new language as a mortgage broker, which this is essential to as we all have different specialties which bring...we bring to the table in a professional, certified level versus just Googling and data research. When...am I to interpret this might be for Jacky, am I to interpret this language to contain any covenant or clause that restricts. So, because, you know, regular home deeds, just if they wanted to buy a farm on ag land and they just get a regular mortgage, the mortgage isn't going to acknowledge agricultural uses, but it's not going to say you're not allowed to plant or to have animals. So, have you guys looked at the standard, Fannie Mae, Freddie Mac, Gov E loan deeds? And are you certain that this language is not going to...there's not a direct conflict? That's what I would...that's a question. And if you've not done that, I would have the attorneys do that before we proceed on that language, because we do it the wrong way without knowing what's legal and what, what the real mortgages in the State of Hawaii look like, and that could be a direct conflict.

Ms. Takakura: If I may, Chair?

Mr. Tackett: Yeah, please do.

Ms. Takakura: Thank you, Commissioner Pali. So, because we don't see those documents, that's the very reason we would like to say that they are...anything that tries to say that would be considered invalid and not enforceable, because those are private documents and they're not documents that come before us. In some situations, we do review CC&Rs, but we wouldn't know if the developer changed them after we reviewed them, and so, that's why we're going to have this language in here that saying it's not enforceable. And that's why we, we proposed this for the very...that's the very reason we propose these changes, because we don't see those.

Ms. Pali: Oh, okay. I missed the part that you underlined, you know, this part you underlined. You're saying it's not enforceable. Okay, but to preserve the intent of this, I can see that that's important to make sure people aren't committing legally to utilizing the land other than ag, but if we're gonna go down that route, you know, you can pull, it is standard the mortgages in the State of Hawaii are standard language with every regular lending bank mortgage and you could cross reference, but okay, so then I would then be in agreeance then with your recommendation since you've highlighted shall be considered invalid and not enforceable. Okay, thank you. That's...no further...and then, Director, can you just clarify the...we threw everything in Ag like that concept or that I retained from one of our long-term meetings.

Ms. McLean: I call the State and County Ag Districts the default district. It's not as if they were purposely designated Ag because of existing uses or because of their quality or character. It's like things that weren't Urban or Rural were designated Ag, so, yes, I think that's accurate...

Mr. Tackett: All right...

Ms. Pali: Chair, if I may just summarize, so because it's...because Ag has been the default district, love it, I'm gonna totally...that's gonna be my new jam now for that, I feel like this could be used in the wrong way. If we use it on parcels that were default ag, that weren't really, you know, intentionally Ag, I think it could be a slightly harmful for what we want to see in the future potentially, but that's just my two cents. That's all I got, thank you.

Mr. Tackett: Are you saying Commissioner Pali that somebody might use their chickens and pigs and corn against you, like your neighbors?

Ms. Pali: Not against me brother, but you can't dress a cat up and call it a fox, it's still a cat.

Mr. Tackett: Right. But is that...that's what we're talking about, right? That on all those Ag lots if you want to, if you want to have a chicken, you can have a chicken. If you want a pig, you can have a pig. If you want to grow kalo or if you want to grow mac nuts or whatever that basically nobody can tell you, you can't, right? That's what this bill says, right, Director, basically or Jacky, sorry, sorry. Go ahead Jacky, I apologize.

Ms. Takakura: Thank you, Chair. This is for Rural Zoning District. So, this is to allow ag use in Rural Zoning District.

Mr. Tackett: Right, which is basically country anyway, it's not urban. Yeah, yeah, so, it's people that are in the country anyhow. Not like me with my, with my yuzu forest in the middle of Waiehu Heights you know what I mean, so...I'm the opposite of that.

Ms. Pali: Actually Chair, I have one last question if you would allow me to.

Mr. Tackett: Sure.

Ms. Pali: Can you give me one example because there must be lots of examples of this if they're gonna write the language to, to defer this, so Planner Jacky can you give me a few examples of Rural Zoning Districts that have adopted things that have not allowed people to use the land to farm or to do ag?

Ms. Takakura: Thank you, Commissioner Pali. I don't know because this didn't go through a discussion, so I'm sorry, I don't know.

Ms. McLean: If I can comment Commissioner Pali, language similar to this exists in the County Ag Zoning District, and so, it's not like this is a new concept. It would be new for Rural, and we do have one testifier who was the proponent of this bill so you may be able to ask her when, when you take testimony.

Mr. Tackett: Kellie, was that, was that all you have for now, then I'm gonna go to Ashley, 'cause I believe Ashley had something too. Ashley, go ahead.

Ms. Lindsey: I was just gonna say, my brother lives in Makawao Town and they are not allowed to have any animals more than one cat and one dog, I wanna say. So, they cannot have chickens or other animals...they can't have chickens for sure or fish, 'cause my brother had an aquaponics system he had to take down, and they're pretty rural in Makawao Town...Makawao area.

Mr. Tackett: If there's no clarifying questions, let's open public testimony and then we'll...we can go back to discussion after. Thank you, Director.

Ms. McLean: Yes, Chair, we one person so far signed up to testify and that is Tamara Paltin.

Mr. Tackett: And do I need to...do they need to tell the truth or not for this one?

Ms. McLean: I am sure Councilmember Paltin always tells the truth, but she does not need to be sworn in as this is not a contested case.

Mr. Tackett: Thank you so much. Go ahead Tamara.

Ms. Tamara Paltin: Promise to tell the truth. Thank you, my name's Tamara Paltin. So, the idea for this bill I think a lot of you remember the West Maui Community Plan and Plantation Estates drama and so that's where the idea of this bill came from. While our initial review through committee ultimately kept that subdivision as ag, that doesn't mean they can't go through a change in zoning process on their own and so, you know, we have had in the past plenty of HOAs

you know, just restricting things that folks are allowed to do and you know, for chicken farming and like that you don't really need the roosters, you can have feed that lets chickens have eggs. For pig farming you can do grain natural farming which doesn't make it stink. And you know, there's also Department of Health laws. I think you know, for the County the default zoning in the past has been Interim Zoning and so, you know, I know we all have this great love of gentlemen estates, fake farms, but we don't...personally speaking with the Corona Virus situation and the emphasis on sustainability I didn't want to see, you know, a lot of the Rural used to be County zoned Ag not Interim, sorry I'm getting ready to pick up my kids, so if you hear kids...but good work you guys a lot of good discussion today. Basically, you know, we don't want folks to move here and take what used to be ag lands and prohibit folks from doing ag, if they wanna...if they don't wanna do ag that's one thing, but we don't want to prohibit folks from doing ag and becoming more self-sustainable. We saw that even in the past in actual agricultural subdivisions. You know, Launiupoko they didn't let you have any animals that make noise and things like that, and as far as using animals as a weapon, we have that right in Kahului. I have a guy that writes all sorts of emails, he has like all these roosters in his neighbor's yard and he feels harassed and I don't know what to do to help him but that's not even Ag or Rural that's residential and he has a big problem with that. So, you know, basically the purpose or the reason that I wrote it was to prevent fake gentlemen estate people from preventing locals from or anyone doing ag because you know, that's kind of like our, our background is self-sustainability. And that's it. I don't know if my time's up.

Mr. Tackett: Commissioners, any questions? Thank you. Yeah, makes sense to me. Commissioner Thayer, did you say somebody has a question or no? No?

Ms. Thayer: No. But I will say thank you for being this thoughtful.

Mr. Tackett: If there is any, if there's...oh, go ahead, I believe, I was just going to check and see if there's any other testifiers. If there's any other testifiers, please come forward at this point. Hearing none, if we could, please...Kellie, you have something? I can't hear you.

Ms. Pali: That's okay, no, no, no. That's okay, thank you.

Mr. Tackett: Do you have a question? She's still there, I see her.

Ms. Pali: Yes, if Councilmember Paltin is still on the line, I did have a question for her, sorry. I thought I missed it, so I was like...oh, there she is. Hi, I do have a question for you actually, so did you get a chance to see what the Department's recommending in language? Did you get a chance to see that?

Ms. Paltin: I didn't, but I heard it briefly what they went over. So, I didn't you know, scrutinize it but it sounds fine to me, I don't have any objection.

Ms. Pali: Okay, that was my question. Thank you. Okay.

Mr. Tackett: Thank you. Okay, if there's any more testifiers please come forward at this time? Going once, going twice, going three times. Director, can we please close public testimony?

Ms. McLean: Yes, Chair, public testimony is closed,

Mr. Tackett: And then discussion, do we have any discussion? Seems fairly straightforward, you guys. Everybody...oh, go ahead Commissioner Pali. No? With no discussion on the floor, could we have the recommendation?

Ms. Takakura: So, Chair Tackett, the recommendation is to recommend to the County Council the proposed bill with the Department's amendment...revisions. I can read it again if you want me to.

Mr. Tackett: Commissioners, do you need...a raise of hand if anyone wants it read again? No, I believe we're all good. I would entertain a motion. Commissioner Thayer.

Ms. Thayer: Thank you, Chair. I would put forth a motion to recommend approval of the proposed bill with the amendments suggested by the Planning Department.

Mr. Tackett: Okay, and then we got a second from Commissioner Pali. So, we got a motion and a second. Would you guys care to elaborate on that motion?

Ms. Thayer: I will just say that I agree that it's very important to preserve our Rural Districts and the character of our Rural Districts and the ability of everybody who lives here to grow things and raise things or for either self-sustaining purposes or for sale. But all of the above, I think this will preserve the character of our island and our community.

Mr. Tackett: Nice. And, Commissioner Pali. You good. The rest of the commissioners, anybody care to speak to the motion? Commissioner Lindsey, go ahead.

Ms. Lindsey: Finally, this is so great. I'm so happy that they finally did this. I had lived in a few places and I was like, what is this? I can't have an animal. So, thank you for doing this. Next thing is cultural practices. That's it.

Mr. Tackett: All right. Anybody else want to speak to the motion? If not, I believe we're on our new style of show of hands. So, all those in favor?

Ms. McLean: Chair, I see, one, two, three, four, five, six, seven, eight Commissioners with one excused, Vice-Chair La Costa, eight Commissioners voting in favor.

Mr. Tackett: Thank you.

It was moved by Ms. Thayer, seconded by Ms. Pali, then

**VOTED: To Recommend Approval of Resolution No. 21-113 to the County Council with Amendments as Recommended by the Planning Department.
(Assenting – K. Thayer, K. Pali, K. Freitas, J. Edlao, M. Hipolito,**

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A. Lindsey, D. Thompson, C. Tackett)
(Excused – P D. La Costa)

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II