

REQUEST FOR LEGAL SERVICES

Date: April 20, 2017
From: Robert Carroll, Chair
Land Use Committee

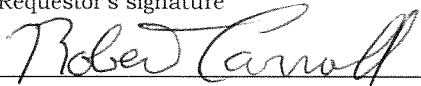
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: James Giroux, Esq.

Subject: Amending Chapters 19.04 and 19.30A, Maui County Code, Relating to Roadway Lots and Restricted Use Lot Subdivisions and Authorizing Fees for Ministerial and Discretionary Permit Applications (LU-26)

Background Data: Review and approved revised proposed bill, which separates one bill into two bills. A marked-up version comparing the bill previously approved by your office against the revised bill is transmitted with this request. Your coding on the first bill was LF2017-0204, 2017-02-16 Ord Amd Ch 19.04 & 19.30A. An original hard copy of the revised bill is required.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY
 OTHER:

Requestor's signature  Robert Carroll	Contact Person <u>Gary Saldana</u> (Telephone Extension: <u>7137</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): Wednesday, April 27, 2017
REASON: For posting on Land Use Committee meeting scheduled for May 17, 2017

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)

RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, RELATING TO ROADWAY LOTS AND RESTRICTED USE LOT SUBDIVISIONS AND AUTHORIZING FEES FOR MINISTERIAL AND DISCRETIONARY PERMIT APPLICATIONS

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

SECTION 1. The purpose of this ordinance is to authorize certain subdivisions and uses that are not detrimental to the public health, safety, or welfare and that are consistent with best planning practices.

SECTION 2. Section 19.04.015, Maui County Code, is amended to read as follows:

“19.04.015 Purpose and intent. A. The purpose and intent of this comprehensive zoning article is to regulate the utilization of land in a manner encouraging orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the revised charter of the County[;] of Maui (1983), as amended, and the general plan and the community plans of the County.

B. The purpose and intent of this comprehensive zoning article is also to promote and protect the health, safety, and welfare of the people of the County by:

1. Guiding, controlling, and regulating future growth and development in accordance with the general plan and community plans of the County[;] .

2. Regulating the location and use of buildings and land adjacent to streets and thoroughfares to lessen the danger and inconvenience to the public caused by undue interference with existing or prospective traffic movements on streets and thoroughfares[;] .

3. Regulating the location, use, or design of sites and structures in order to minimize adverse effects on

surrounding uses, prevent undue concentrations of people, provide for adequate air, light, privacy, and the convenience of access to property, and secure the safety of the public from fire and other dangers[;] .

4. Encouraging designs [which] that enhance the physical form of the various communities of the County[;] .

5. Stabilizing the value of property[;] .

6. Encouraging economic development which provides desirable employment and enlarges the tax base[;] .

7. Promoting the protection of historic areas, cultural resources, and the natural environment[;] .

8. Encouraging the timeliness of development in conjunction with the provision of public services which include, but are not limited to, police, fire, flood protection, transportation, water, sewerage, drainage, schools, recreational facilities, health facilities, and airports.

C. The purpose and intent of this comprehensive zoning article is also to provide reasonable development standards which implement the community plans of the County. These standards include, but are not limited to, the location, height, density, massing, size, off-street parking, yard area, open space, density of population, and use of buildings, structures, and lands to be utilized for agricultural, industrial, commercial, residential, or any other purpose.”

SECTION 3. Section 19.04.020, Maui County Code, is amended to read as follows:

“19.04.020 Compliance. A. Buildings and [Subdivisions.] subdivisions. No building or structure shall be erected, structurally enlarged, or maintained unless it complies with the requirements of the building code of the County. No land shall be subdivided unless the subdivision complies with the provisions of this title.

B. [Prohibited Uses.] Permitted uses in each district. There [shall] may be permitted in the districts three categories of uses [established by this section]: principal, accessory, and special. Any use [which] that is not expressly listed as a permitted [as a] principal, accessory, or special use [shall be] is prohibited. Unless otherwise expressly prohibited elsewhere in this title, restricted use lots and the uses allowed thereon are permitted in all districts.”

SECTION 4. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Restricted use lot” means a lot that shall only be used for drainage, open space, bikeway, pedestrian walkway, greenway, landscaping, roadway, or minor utility facility purposes.”

SECTION 5. Section 19.04, Maui County Code is amended by adding Section 19.04.025 to read as follows:

“Section 19.04.025 Roadway lots and restricted use lots.
Minimum lot area, lot width, and lot coverage requirements elsewhere in this title do not apply to roadway lot and restricted use lot subdivisions.

Roadway lot and restricted use lot subdivisions are subject to the following:

1. Roadway lots and restricted use lots shall be designated in the notes section of the final subdivision plat with a description of each lot’s intended purpose and any designation shall be recorded and shall run with the land.

2. Any lot designated as a roadway lot or restricted use lot shall not be used for any purpose other than a roadway lot or restricted use lot, respectively, unless the lot is consolidated with another lot and the resulting lot complies with the minimum lot area, lot width, and lot coverage requirements elsewhere in this title.

3. In the agricultural district, any future consolidation concurrent with a subdivision that includes any roadway lot or restricted use lot shall not result in any additional lots above the number that would have been allowed at the time the lot was created by the subdivision, in accordance with sections 19.30A.030.G and 19.30A.040 of this title.”

SECTION 6. Section 19.04, Maui County Code, is amended by adding Section 19.04.050 to read as follows:

“Section 19.04.050 Rules and fees. A. The department may collect fees as set forth in the annual budget to administer this title, such as fees to review and process ministerial and discretionary permit applications, including applications that are reviewed by the department but administered by another agency, including building permit or subdivision applications. Additional fees, as set forth in the annual budget, may also be collected when an application is deemed by the director to be inadequate or incorrect and, therefore, requires additional submittals and further review.

B. The director may adopt administrative rules to implement the provisions of this article.”

SECTION 7. Section 19.30A.040, Maui County Code, is amended to read as follows:

“19.30A.040 Limitations on resubdivision. A. At the time of subdivision, the director of public works [and waste management] shall determine the maximum number of lots that can be created based upon the provisions and standards set forth in section 19.30A.30[;] .

[2.]B. The subdivider shall allocate the maximum number of lots that can be created between the original lot and any new lot created as a result of the subdivision[;] .

[3.]C. The allocation of lots shall be recorded with the bureau of conveyances[;] .

[4.]D. No lot, or portion thereof, which is in the agricultural district shall be further subdivided beyond the maximum number of lots permitted pursuant to this chapter and as recorded with the bureau of conveyances, except as provided by subsection 19.30A.040.C[;] .

[B.]E. The following subdivisions shall not reduce the gross “area of lot” [nor] or the “maximum number of permitted lots” as provided by subsection 19.30A.030.G:

1. Any subdivision requested by a public agency or public utility company for a public purpose;

2. Any consolidation and resubdivision in which no additional developable lots, as defined by section 18.04.123 [Maui County Code,] of this code, are created, [provided that] so long as this would not result in the potential to create any additional lots than could have been created prior to consolidation and resubdivision;

3. Any subdivision for purposes of providing an easement exclusively for the protection of sites of cultural and historic significance; greenways; protection of sensitive environmental areas such as wetlands, streams, and endangered species habitat; and easements for public access to shoreline and mountain areas; or

4. Any subdivision for purposes of providing a roadway easement, [or lot.] roadway lot, or restricted use lot.

[C.]F. If the original lot has been subdivided into the maximum number of lots permitted pursuant to this chapter, additional lots may be created for family members as described in subsections 18.20.280.B.1 and 18.20.280.B.2[, Maui County Code,] of this code, whether or not a deferral of improvements is intended,

with the approval of the council; the application for such additional lots shall be processed in the same manner as applications for conditional permits, as provided by chapter 19.40[, Maui County Code.] of this title.

[D.]G. No deed, lease, agreement of sale, mortgage, or other instrument of conveyance shall contain any covenant or clause which restricts, directly or indirectly, the operation of agricultural activities on lands within the agricultural district. This subsection shall not apply to any covenant or clause existing prior to the effective date of the ordinance codified in this chapter.”

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 7. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

lu:misc:026abill01:grs

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, RELATING TO AUTHORIZE CERTAIN ROADWAY LOTS AND RESTRICTED USE LOT SUBDIVISIONS AND USES AUTHORIZING FEES FOR MINISTERIAL AND DISCRETIONARY PERMIT APPLICATIONS

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

SECTION 1. The purpose of this ordinance is to authorize certain subdivisions and uses that are not detrimental to the public health, safety, or welfare and that are consistent with best planning practices, ~~including certain filming and photography activity and certain events.~~

SECTION 2. Section 19.04.015, Maui County Code, is amended to read as follows:

“19.04.015 Purpose and intent. A. The purpose and intent of this comprehensive zoning article is to regulate the utilization of land in a manner encouraging orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the revised charter of the County[,] of Maui (1983), as amended, and the general plan and the community plans of the County.

B. The purpose and intent of this comprehensive zoning article is also to promote and protect the health, safety, and welfare of the people of the County by:

1. Guiding, controlling, and regulating future growth and development in accordance with the general plan and community plans of the County[;] .

2. Regulating the location and use of buildings and land adjacent to streets and thoroughfares to lessen the danger and inconvenience to the public caused by undue interference with existing or prospective traffic movements on streets and thoroughfares[;] .

3. Regulating the location, use, or design of sites and structures in order to minimize adverse effects on surrounding uses, prevent undue concentrations of people, provide for adequate air, light, privacy, and the convenience of access to property, and secure the safety of the public from fire and other dangers[;] .

4. Encouraging designs [which] that enhance the physical form of the various communities of the County[;] .

5. Stabilizing the value of property[;] .

6. Encouraging economic development which provides desirable employment and enlarges the tax base[;] .

7. Promoting the protection of historic areas, cultural resources, and the natural environment[;] .

8. Encouraging the timeliness of development in conjunction with the provision of public services which include, but are not limited to, police, fire, flood protection, transportation, water, sewerage, drainage, schools, recreational facilities, health facilities, and airports.

C. The purpose and intent of this comprehensive zoning article is also to provide reasonable development standards which implement the community plans of the County. These standards include, but are not limited to, the location, height, density, massing, size, off-street parking, yard area, open space, density of population, and use of buildings, structures, and lands to be utilized for agricultural, industrial, commercial, residential, or any other purpose.-.”

~~D. The department may collect fees as set forth in the annual budget to administer this title, such as fees to review and process ministerial and discretionary permit applications, including applications that are reviewed by the department but administered by another agency, including building permit or subdivision applications. Additional fees, as set forth in the annual budget, may also be collected when an application is deemed by the director to be inadequate or incorrect and, therefore, requires additional submittals and further review.~~

~~E. The director may adopt administrative rules to implement the provisions of this article.”~~

SECTION 3. Section 19.04.020, Maui County Code, is amended to read as follows:

“19.04.020 Compliance. A. Buildings and [Subdivisions.] subdivisions. No building or structure shall be erected, structurally enlarged, or maintained unless it complies with the requirements of

the building code of the County. No land shall be subdivided unless the subdivision complies with the provisions of this title.

B. [Prohibited Uses.] Permitted uses in each district. There [shall] may be permitted in the districts three categories of uses [established by this section]: principal, accessory, and special. Any use [which] that is not expressly listed as a permitted [as a] principal, accessory, or special use [shall be] is prohibited. Unless otherwise expressly prohibited elsewhere in this title, restricted use lots and the uses allowed thereon are permitted in all districts."

SECTION 4. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

"Restricted use lot" means a lot that shall only be used for drainage, open space, bikeway, pedestrian walkway, greenway, landscaping, roadway, or minor utility facility purposes."

SECTION 5. Section 19.04, Maui County Code is amended by adding Section 19.04.025 to read as follows:

Section 19.04.025 Roadway lots and restricted use lots. Minimum lot area, lot width, and lot coverage requirements elsewhere in this title do not apply to roadway lot and restricted use lot subdivisions.

Roadway lot and restricted use lot subdivisions are subject to the following:

1. Roadway lots and restricted use lots shall be designated in the notes section of the final subdivision plat with a description of each lot's intended purpose and any designation shall be recorded and shall run with the land.

2. Any lot designated as a roadway lot or restricted use lot shall not be used for any purpose other than a roadway lot or restricted use lot, respectively, unless the lot is consolidated with another lot and the resulting lot complies with the minimum lot area, lot width, and lot coverage requirements elsewhere in this title.

3. In the agricultural district, any future consolidation concurrent with a subdivision that includes any roadway lot or restricted use lot shall not result in any additional lots above the number that would have been allowed at the time the lot was created by the subdivision, in accordance with sections 19.30A.030.G and 19.30A.040 of this title-."

~~B. — [Prohibited Uses.] Permitted uses in each district. There [shall] may be permitted in the districts three categories of uses [established by this section]: principal, accessory, and special. Any use [which] that is not expressly listed as a permitted [as a] principal, accessory, or special use [shall be] is prohibited.~~

~~Unless otherwise expressly prohibited elsewhere in this title, the following uses are permitted in all districts:~~

~~1. — Commercial filming and photography activity, subject to the following limitations:~~

~~a. — If on County property, the activity shall be authorized by a valid film permit from the County throughout the duration of the activity.~~

~~b. — If on State property, the activity shall be authorized by a valid film permit from the State throughout the duration of the activity.~~

~~c. — If on private property, notice of the activity shall be provided to owners of all adjacent properties and potentially impacted properties. Such notice shall be provided no less than fourteen days prior to the initiation of the activity, shall describe the activity and its duration, and shall provide contact information for a responsible party who shall respond to questions and concerns from property owners. Evidence and documentation of such notice shall be provided to the director upon request.~~

~~d. — If on private property, the activity shall not result in material annoyance, inconvenience, or discomfort to the neighborhood or to the public, such as from excessive noise, lighting, and traffic, beyond such impacts that would ordinarily occur with any use permitted on the property.~~

~~e. — If on private property, the activity shall involve no outdoor activities before 8:00 a.m. and after 10:00 p.m., including setup and breakdown.~~

~~f. — The activity shall not cause permanent change in the use of the subject property, unless such change is lawful or properly permitted.~~

~~g. — All other required permits and approvals shall be obtained.~~

~~2. — A temporary commercial event such as a bazaar, fair, reception, or festival, subject to the following limitations:~~

~~a. — The event is related, incidental, customary, or compatible with an existing principal or accessory use.~~

~~b. — Notice of the event shall be provided to owners of all adjacent properties for an event not~~

sponsored by the County. Such notice shall be provided no less than fourteen days prior to the initiation of such event, shall describe the event and its duration, and shall provide contact information for a responsible party who shall respond to questions and concerns from property owners. Evidence and documentation of such notice shall be provided to the director upon request.

e. The event shall not result in material annoyance, inconvenience, or discomfort to the neighborhood or to the public, such as from excessive noise, lighting, and traffic, beyond such impacts that would ordinarily occur with any use permitted on the property.

d. The activity shall involve no outdoor activities before 8:00 a.m. and after 10:00 p.m., including setup and breakdown.

e. The event shall not cause permanent change in the use of the subject property, unless such change is lawful or properly permitted.

f. Events shall be limited to no more than twelve days in a twelve month period per parcel for County sponsored events and four days in a twelve-month period per parcel for events that are not sponsored by the County.

g. All other required permits and approvals shall be obtained.

3. Temporary sales offices for new projects when located in the same project area.

4. Restricted use lots and the uses allowed thereon. Limitations listed above shall not apply to any use that is expressly permitted elsewhere in this title."

SECTION 46. ~~Section 19.04.040, Maui County Code, is amended by adding new definitions to appropriately inserted and~~Section 19.04.050 to read as follows:

“Section 19.04.050 Rules and fees. A. The department may collect fees as set forth in the annual budget to administer this title, such as fees to review and process ministerial and discretionary permit applications, including applications that are reviewed by the department but administered by another agency, including building permit or subdivision applications. Additional fees, as set forth in the annual budget, may also be collected when an application is

deemed by the director to be inadequate or incorrect and, therefore, requires additional submittals and further review.

B. The director may adopt administrative rules to implement the provisions of this article.”

“Commercial filming and photography” means filming and photography for commercial purposes that requires the use of equipment such as light stands, electrical power boxes, dolly and dolly tracks, and similar grip and electrical gear.

“Restricted use lot” means a lot that shall only be used for drainage, open space, bikeway, pedestrian walkway, greenway, landscaping, roadway, or minor utility facility purposes.”

SECTION ~~57~~. Section 19.30A.040, Maui County Code, is amended to read as follows:

19.30A.040 Limitations on resubdivision. A. At the time of subdivision, the director of public works [and waste management] shall determine the maximum number of lots that can be created based upon the provisions and standards set forth in section 19.30A.30[;] .

[2.]**B.** The subdivider shall allocate the maximum number of lots that can be created between the original lot and any new lot created as a result of the subdivision[;] .

[3.]**C.** The allocation of lots shall be recorded with the bureau of conveyances[;] .

[4.]**D.** No lot, or portion thereof, which is in the agricultural district shall be further subdivided beyond the maximum number of lots permitted pursuant to this chapter and as recorded with the bureau of conveyances, except as provided by subsection 19.30A.040.C[;] .

[B.]**E.** The following subdivisions shall not reduce the gross “area of lot” [nor] or the “maximum number of permitted lots” as provided by subsection 19.30A.030.G:

1. Any subdivision requested by a public agency or public utility company for a public purpose;

2. Any consolidation and resubdivision in which no additional developable lots, as defined by section 18.04.123 [Maui County Code,] of this code, are created, [provided that] so long as this would not result in the potential to create any additional lots than could have been created prior to consolidation and resubdivision;

3. Any subdivision for purposes of providing an easement exclusively for the protection of sites of cultural and

historic significance; greenways; protection of sensitive environmental areas such as wetlands, streams, and endangered species habitat; and easements for public access to shoreline and mountain areas; or

4. Any subdivision for purposes of providing a roadway easement, ~~[or lot.] roadway lot, or restricted use lot.~~

~~[C.]F.~~ If the original lot has been subdivided into the maximum number of lots permitted pursuant to this chapter, additional lots may be created for family members as described in subsections 18.20.280.B.1 and 18.20.280.B.2~~], Maui County Code,~~ of this code, whether or not a deferral of improvements is intended, with the approval of the council; the application for such additional lots shall be processed in the same manner as applications for conditional permits, as provided by chapter 19.40~~], Maui County Code.] of this title.~~

~~[D.]G.~~ No deed, lease, agreement of sale, mortgage, or other instrument of conveyance shall contain any covenant or clause which restricts, directly or indirectly, the operation of agricultural activities on lands within the agricultural district. This subsection shall not apply to any covenant or clause existing prior to the effective date of the ordinance codified in this chapter.~~."~~

SECTION 6. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 7. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

MICHAEL J. HOPPER

Department of the Corporation Counsel
County of Maui

LF2017-0204
2017-02-16 Ord Amd Ch 19.04 & 19.30A
[lu:misc:026abill01:grs](#)