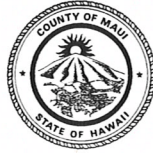


KATHY L. KAOHU
County Clerk



JAMES G.M. KRUEGER
Deputy County Clerk

OFFICE OF THE COUNTY CLERK

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/county/clerk

January 21, 2022

OFFICE OF THE
COUNTY COUNCIL

2022 JAN 24 AM 9:27

RECEIVED

Honorable Shane M. Sinenci, Chair
Agriculture and Public Trust Committee
Council of the County of Maui
Wailuku, Hawaii 96793

Dear Chair Sinenci:

Respectfully transmitted is a copy of Bill No. 17 (2022), entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29, MAUI COUNTY CODE, TO PROHIBIT PRIVATE RESTRICTIONS ON SMALL-SCALE AGRICULTURAL USES AND THE KEEPING OF ANIMALS IN ANY RURAL DISTRICT" that was referred to your Committee by the Council of the County of Maui at its meeting of January 21, 2022.

Also transmitted for your convenience is a copy of a communication received from the Planning Director.

Respectfully,

Handwritten signature of Kathy L. KaoHu in black ink.

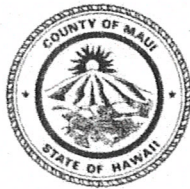
KATHY L. KAOHU
County Clerk

/jym

Enclosure

cc: Director of Council Services

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

RECEIVED
2022 JAN -6 PM 4:05

OFFICE OF THE
COUNTY CLERK

January 4, 2022

Honorable Michael P. Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 1/6/22
Mayor Date

For Transmittal to:

Honorable Alice Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Council Chair Lee and Councilmembers:

SUBJECT: A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29 OF THE MAUI COUNTY CODE TO PROHIBIT PRIVATE RESTRICTIONS ON SMALL-SCALE AGRICULTURAL USES AND THE KEEPING OF ANIMALS IN ANY RURAL DISTRICT

The Department of Planning (Department) received Resolution 21-113, adopted on July 23, 2021, transmitting a proposed bill to amend Chapter 19.29 of the Maui County Code to prohibit instruments of conveyance from restricting the growing and harvesting of any agricultural crop or product in the County Rural zoning districts.

The stated purpose and intent of the County Rural Districts is to implement the goals and policies of the County's general plan and community plans; to provide low density development which preserves the rural character of certain areas; to allow small-scale agricultural uses and the keeping of animals; and to serve as a transition between standard residential or other urban density development and agricultural lands. Chapter 19.29 allows growing and harvesting of any agricultural crop or product as a principal use. It also allows the keeping of livestock, hogs, poultry, and fowl and game birds as an accessory use.

The Department recommended slight modifications to the bill transmitted by Resolution No. 21-113 and presented a revised bill to the three planning commissions as follows: "19.29.045 Instruments of conveyance. [No] Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance [may be] interpreted to contain any covenant or clause that restricts, directly or indirectly, the growing and harvesting of any agricultural crop or product on lands within the RU-0.5, RU-1, RU-2, RU-5, RU-10, and County rural districts shall be considered invalid and not enforceable. This section does not apply to any covenant or clause existing prior to the effective

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Alice Lee, Chair
January 4, 2022
Page 2

date of the ordinance establishing this section.”

All three planning commissions unanimously approved recommending the modified version to the County Council. Here is a summary of the planning commissions’ recommendations:

<u>Planning Commission</u>	<u>Date of Vote</u>	<u>Recommendations</u>	<u>Vote Count</u>
Maui	Oct. 12, 2021	Pass the bill as presented.	8-0
Moloka`i	Oct. 13, 2021	Pass the bill as presented.	7-0
Lāna`i	Oct. 20, 2021	Pass the bill with a revision to remove the word “considered”.	8-0

However, the version transmitted herein has been revised by Corporation Counsel to be consistent with the stated purpose and allowed uses in Chapter 19.29 and is based on the provisions of Hawaii Revised Statutes Chapter 205-4.6; the revisions do not change the intent of the bill.

The new bill proposes this language instead: “Private restrictions on small-scale agricultural uses and the keeping of animals. Any private restriction in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances limiting or prohibiting small-scale agricultural uses and the keeping of animals in any rural district is voidable. This section does not apply to any deed, agreement of sale, or other conveyance of land existing prior to the effective date of the ordinance establishing this section.”

The proposed bill is consistent with the goals, policies and actions of the 2010 Countywide Policy Plan and the 2012 Maui Island Plan which include the following:

- Countywide Policy Plan, page 76, Implementing Action a: Establish design guidelines and standards to enhance urban and rural environments.
- Maui Island Plan Chapter 7, 7.2.1-Action 1: Coordinate with the State to develop and revise regulations for rural development, within the State Rural District, to encourage creative design and sustainable communities.

Therefore, pursuant to Sections 8-8.3(6) and 8-8.4 of the Revised Charter of the County of Maui (1983), as amended, the Department respectfully recommends the Council’s consideration of the attached proposed bill, “A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29, MAUI COUNTY CODE, TO PROHIBIT PRIVATE RESTRICTIONS ON SMALL-SCALE AGRICULTURAL USES AND THE KEEPING OF ANIMALS IN ANY RURAL DISTRICT.”

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Alice Lee, Chair
January 4, 2022
Page 3

Please see the referenced minutes of the commission meetings on the bill:

- Maui Planning Commission, October 12, 2021:
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/28690>
- Moloka'i Planning Commission, October 13, 2021:
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/28703>
- Lāna'i Planning Commission, October 20, 2021:
<https://www.mauicounty.gov/ArchiveCenter/ViewFile/Item/28700>

Thank you for your attention and consideration. Should further clarification be necessary, please feel free to contact me.

Sincerely,



FCR

MICHELE CHOUREAU MCLEAN, AICP
Planning Director

Attachments
MCM:JEH:JMCT
S:\ALL\APO\19.29 rural\Reso 21-113\211129counciltransmittal19.29.docx

**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,**

Maui Planning Commission
Portion of Regular Minutes – October 12, 2021
Item B.5
Page 7

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

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

MOLOKAI PLANNING COMMISSION
REGULAR MINUTES
OCTOBER 13, 2021

A. CALL TO ORDER

The regular meeting of the Molokai Planning Commission was called to order by Chairperson Lori Buchanan at approximately 11:08 a.m., Wednesday, February 10, 2021, via BlueJeans Meeting No. **954894910**.

A quorum of the Commission was present. (See Record of Attendance.)

Chair Buchanan: Okay, aloha everyone and welcome to the October 13, 2021 meeting of the Molokai Planning Commission. On our agenda today, on the call of order, you'll find many ways to participate in this meeting, it is a virtual meeting, and, simply, if you want to, you can, at the time of public testimony, unmute yourself, and then state your name for the record. I will swear all testifiers in, and then following that, you can testify. So, we have a really big agenda today so I'm going to ask Commission Members if there's any request to amend the agenda today. Seeing none, we will move on to item B, under Public Hearing, and under Public Hearing, item number 1:

Chair Buchanan read the following agenda item description into the record:

B. PUBLIC HEARING (Action to be taken after the Public Hearing)

- 1. MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting Resolution No. 21-113 referring to the Molokai Planning Commission 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>

Chair Buchanan: And, with that, you guys had handouts and I believe also that PowerPoint, but with that, I'm happy to turn it over to Planning staff.

Ms. McLean: Chair, and I'm happy to hand it over to our Administrative Planning Officer, Jacky Takakura. I did want to note though, this item and the next one, you do not need to swear in testifiers.

Chair Buchanan: Okay.

Ms. McLean: Those go to the Council, but you're correct, the other ones you do. Thank you, Chair.

Chair Buchanan: Okay. Thank you. I glad Jacky giving the briefing 'cause I get hard time hear you, Director McLean. Okay. Thank you, Jacky. Go ahead.

So, the Department of Planning supports the protection and diversification of agricultural operations in the County as an economic engine and in the context of food sustainability and in the preservation of the rural character of Maui County. And the Department also supports the preservation of permitting uses -- permitted uses established by zoning to facilitate the most efficient and desirable use of land. So, if the Commission also supports the intention of the bill, we do have a revision to the wording, and what we would prefer to say is that, for instruments of conveyance, 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 agricultural crop or product on lands within the RU-0.5, RU-1, RU-2, RU-5, RU-10 in County rural districts shall be considered invalid and not enforceable. This section does not apply to any covenant or clause existing prior to the effective date of the ordinance established in this section, and the wording is in the memo report if you wanted to look at it a little more carefully. And I do have a map of the rural districts on the island of Molokai in the memo report towards the end. As I mentioned, the Department support -- supports the proposed bill for ordinance as revised, and the Commission, Molokai Planning Commission, has four options: you can recommend approval of the proposed bill to the County Council, recommend approval of the proposed bill with amendments to the County Council, recommend denial, or vote to defer the bill in order to gather additional information. So, that's all I have on this one. We can answer questions or take it from here. Thank you very much.

Chair Buchanan: Thank you, Jacky. We have a question from Commissioner Bridget.

Ms. Mowat: Good morning, Jacky. Thank you, Director or Chairman. Why did -- why -- can you tell me why -- why you changed from no to any? What was the explanation for that one?

Ms. Takakura: Yes. Thank you, Commissioner Mowat. CC&Rs are private documents and we don't regulate them and we don't always see them, and so we wouldn't be able, like we're saying here, we would not be able to enforce on them, and even in the situations where we do review these documents, you know, that we wouldn't know if the developer changed them after we gave the okay, and so it's really important here that because they're private documents, you know, it's not really our -- you know, something that we can regulate and that's why we -- we prefer to say that it simply be invalid and not enforceable

because it's not something that we are -- are -- you know, that's not part of our area of what we ... (inaudible)...

Ms. Mowat: Okay. I didn't quite understand that one.

Ms. Takakura: Yeah, 'cause they're private documents that's why because, yeah, it's mainly because they're private documents.

Ms. Mowat: So, by putting any, that -- that changes everything? I just curious because when it went ... (inaudible)...

Ms. Takakura: Yeah, by adding that shall be considered invalid and not enforceable is what we -- yeah, any of them that try to prohibit ag, they're not valid and they're not enforceable. I see Corporation Counsel might have something to say.

Chair Buchanan: Yeah. I see Stephanie unmuted herself. Go ahead, Stephanie.

Ms. Chen: Chair, Bridget, I think the County's not a party to those agreements so we have no ability to enforce the agreements because we're not a party, which is -- that's what Jacky was -- was saying but, hence, the rationale there.

Chair Buchanan: Thank you, Stephanie. Commissioners, you guys have any other questions for Jacky? Okay. So, Jacky, maybe while they thinking, we can open public testimony, but, when I saw this, I just went like whoa. You know, because now we -- we - - we invalidating covenants, CC&Rs, you know. I'm thinking why and how did this come about 'cause I can almost imagine that somebody in the rural district never like the idea that somebody, you know, was doing stuff so -- or there's, you know, a constant -- there's a constant, you know, complaint to the Planning Department, so can you -- can you expound on that, how this came about, the proposed changes?

Ms. Takakura: Sorry. I just realized I was muted. This came from the County Council, and they had a really brief meeting on it in July, but Councilmember Paltin did come to the Maui Planning Commission yesterday and explained that when they were working on the West Maui Community Plan, I guess this topic came up about subdivisions in rural and people not being allowed to grow stuff, so I think her concern is that, you know, like I was saying about the character of rural is kind of like small farms, you don't want to have that kind of limitation that says you can't grow things or have, you know, animals if -- you know, 'cause it's rural, it's not a urban kind of area. So, she kind of briefly explained that a little bit yesterday.

Chair Buchanan: Thank you, Jacky. Again, I still going say whoa 'cause it's kind of, to me, a slippery slope for the County to be regulating the types of uses. I mean, we already

have the types of uses and that's kind of like a edgy thing between rural and ag because the parcels are much bigger, there's a minimum lot size I believe of a half-acre to, you know, one acre. It is rural. The -- there's a gray line between, you know, ag and rural. So, I will take public testimony on this item unless anybody else has a question right now.

But, wait. Before I do that, I wanted the Commission Members, if there is anyone else that is in the vicinity of your meeting, can you please disclose who's in the room with you? I believe this is something new that came up at County Council that they wanted to know who else might be attending the meetings besides Commission Members. So, Commission Members, do you guys have any disclosures about anyone else in your meeting space?

Ms. Mowat: I no more.

Mr. Poepoe: I think I seen this on the ... (inaudible)... come outside with nobody in, I don't know, is in ear shot.

Chair Buchanan: Okay. Thank you, Commissioner Poepoe.

Ms. Mowat: I just had somebody at the door and so I sent them off. I don't have anybody in here.

Chair Buchanan: Okay.

Ms. Albino: Aloha, Madam. Aloha, Madam Chairman. Aloha, I have a granddaughter who may be passing back and forth because she lives with me but she doesn't in on a meeting.

Chair Buchanan: Okay. Thank you very much for the disclosure. Okay, Commission Members, anyone else? Deb? We no can hear you, Deb. Oh, I still cannot hear you. Okay. We going have to fix your stuff 'cause going be important for you to vote and stuff, but I going move to Commissioner Moore.

Mr. Moore: Yes, I have a three-year-old granddaughter running back and forth. She has no idea what's going on.

Chair Buchanan: Oh, okay. Thank you very much. And so, Deb, I think the last time too we had one issue, I don't know if it's with the earphones and unplugging 'em from your -- your computer or wherever. I find that my monitor sometimes does that. It's just depending on the venue. So, you can use the chat for now if you want to. And then I going move to Commissioner Moss.

Ms. Moss: It's fall break so my kids are home; they're just not in the room with me. They're out in the living room, but they may come in. You never know.

Chair Buchanan: True that. I got it. And I know it's fall break so thank you very much. Usually, I get one little munchkin too but she not here today. So, thank you very much. And then using the chat, Deb, so that's it. I think we good with the disclosures.

Ms. Machado: Madam Chair? Madam Chair?

Chair Buchanan: And I see in the chat -- okay, got it. You in the office but no one can hear your meeting. I got it. Thank you, Deb. Alright, so moving on. Commissioner Machado.

Ms. Machado: I have no one with me in my room.

Chair Buchanan: Okay. Thank you very much. So, we going move to public testimony on this agenda item, so if there's anyone in the public wishing to testify on this agenda item, please unmute yourself or contact Suzette Esmeralda, the board secretary by chat. State your name for the record.

Ms. Esmeralda: Hi, Chair. This is Suzie. I don't have anyone signed up.

Chair Buchanan: Okay. Thank you very much. So, last call for public testimony on this agenda item, the rural amendments. Okay, seeing none, public testimony is closed. So, back to Jacky. So, Jacky, in the discussions about these amendments to -- to the rural district, besides that one meeting from Council, has there any been any other community input other than through the Planning Commissions?

Ms. Takakura: Thank you, Chair Buchanan. No. There has not been.

Ms. Buchanan: Okay. Okay, I, personally, am uncomfortable because if we all read what is on the second page of the handout, and I'm not -- I think it's a great thing to not restrict anybody from growing food, and I'm assuming, at some point, there's a definition of ag, it says instruments of conveyance, any deed, lease, or 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 agricultural crop or product on lands within the rural district, and all of them, pretty much, 1, 2, 5, 10, 0.5. What definition is using -- are they using for agricultural crop? Is it the same for the commercial use where if I'm claiming to have an ag crop, I have to provide gross revenue receipts and stuff like that, Jacky?

Ms. Takakura: It would be any ag crop, even if you were just growing for yourself, that wouldn't be -- we don't want that to -- or we wouldn't -- would prevent the prohibition of any ag crop even if it's for -- for commercial or sustenance.

Chair Buchanan: Is there a list of ag crop list that would be covered under this amendments?

Ms. Takakura: Chair, no. We didn't get anything like that. No.

Chair Buchanan: You know what I -- you know what I getting at, okay, so you live in the rural district, somebody comes in on -- on, basically, a small parcel, whatever, they have livestock, so livestock is covered under ag crops. Right? That's all livestock, that's piggeries, cows, milking, goats, you know, chickens, whatever, and -- and the smallest lot that is covered in the -- in the RU is how big, Jacky?

Ms. Takakura: Chair, it's half-acre.

Chair Buchanan: Half-acre. Okay. So, within the half-acre, you could have all of these ag uses, there's no restriction to having a cow in your half-acre lot in a rural district no matter if your neighbor was right next door or what. Is that correct?

Ms. Takakura: That is correct, Chair Buchanan. Under, in rural, under principal uses, allows growing and harvesting of any agricultural crop or product. So, it's a principal use, it's outright allowed, and what this proposal is saying that a private document cannot say, oh, you cannot grow these things.

Chair Buchanan: Got it. So, when subdivisions come in whether they be whatever subdivisions and people no like the idea that you growing one ag crop next door because they're bothered by it, this law is now saying that no, no matter what your subdivision rules say, so in my case, where I live, if my neighbor wanted to bring one cow next door, whatever, then fine. Go ahead. I cannot grumble about it even though when I bought this lot, the subdivision restrictions was such that I couldn't do X, Y, and Z, so this is fixing that to say regardless of what your subdivision law says, if bruddah like bring in one pig or one cow, he can in a rural district under these, under this. Okay.

Ms. Takakura: Chair, if I may just say, the proposal is that this section wouldn't apply to things that are existing prior to the effective date of the ordinance. And then, just FYI, I was looking at the 19.29, rural, and for livestock hogs, poultry, and fowl and game birds that's an accessory use so you have to -- you would have to have a principal use going on for those things, but growing and harvesting of agricultural crop or product is outright principal uses. That's just getting into the details of the rural chapter. Sorry.

Chair Buchanan: Well, that's important to know. I mean, I -- because I can see, you know, where we've had, through the years, people come in and totally just complain and complain about their neighbor doing this and their neighbor doing that, you know. Why is it allowed? Why this? Why that? And we cannot do nothing about it. So, it does matter. But I see what you getting at. It's, in this, it's specifically targeting rules and regulations outside the Department's control for mostly subdivision and CC&Rs where you would have a rural-type of subdivision, which we do have on Molokai, 'cause -- can you -- can you share the map? No can? Of Molokai?

Ms. Takakura: Yes.

Chair Buchanan: And the areas affected by this?

Ms. Takakura: Yes. Give me about ten seconds.

Chair Buchanan: Yeah. 'Cause the map is kinda ... (inaudible)... this map right here. Yeah, old school sharing. I thought we had more rural than that but I guess it's interim that we have. We have a lot of interim and -- and --

Ms. Takakura: Yes.

Chair Buchanan: Okay.

Ms. Takakura: So, can you see that you have some rural by your town, Kaunakakai, and then along the coast.

Chair Buchanan: Mostly east. Okay. Yeah, too bad we cannot zoom in for find out where the -- I know we do have one map so maybe, later on, we can share that at one other meeting. It's nice to go back and look at 'cause we all know that zoning is permissible uses. Okay. Thank you, Jacky. Alright, I don't have any more questions, so if there's no more last-minute questions from the Commission -- Commissioner Moss.

Ms. Moss: Can you explain about the accessory and the principal use, like how Jacky was saying like livestock was I think she said an accessory use? So -- so, what exactly does that mean?

Ms. Takakura: Okay. Thank you, Commissioner Moss. So, in -- in the zoning districts, you'll see certain types of uses; one is a principal use, which means it's outright allowed, like, in rural, a principal use is you can have a single-family dwelling or you can grow or harvest any ag product, and there's a list of those things, and then underneath that is an accessory use, which is something that kind of goes along with that primary use, you know, things like you can have, here, I'm just looking on here, like a garage, a carport, a barn,

and then in -- usually underneath that is a special use where they would have to come to the Commission for, you know, those are things that are a little bit more unusual, like a commercial stable or riding academy, I'm just -- but you usually see in any of the chapters those three: a principal are outright permitted, an accessory that kinda goes along with the permitted use, and then a special use where you would have to -- you know, it's something that's a little bit unusual that usually you go to the Commission and get permission for. So, in looking at this rural chapter, ag -- growing -- growing and harvesting of any ag crop or product is a principal use, so you can do that without having anything else going on, but the keeping of livestock or hogs or poultry is an accessory use to a principal or permitted, so you'd have to have something else going on along with that accessory 'cause it's accessory to a permitted or primary use. Does that make sense?

Ms. Moss: Yes. I think so.

Ms. Takakura: Okay.

Ms. Moss: So, because I feel the way -- the same way that Chair Buchanan and it's like I live in subdivision and somebody wanted to have like a rooster farm right next to me, I mean I might not like that, you know, they're noisy, so -- so are you saying that they have to first be growing a crop and then they could bring their livestock in or poultry?

Ms. Takakura: Actually, yes. You would be -- you're right because if they were doing this principal use of growing and harvesting of an ag crop or product, that would be the principal and then they could do an accessory, and, yeah, keeping of livestock is an accessory use ... (inaudible)...

Ms. Moss: And the growing of the crop, like that doesn't necessarily mean they have to sell the crop, it could be for themselves ... (inaudible)...

Ms. Takakura: ... (inaudible)... so you're correct. Yes.

Ms. Moss: I mean, I don't know if you know the answer to this, but ... (inaudible)... just for themselves, I mean is that other HOA rules and stuff out there about that?

Ms. Takakura: I'm sorry. I couldn't hear you.

Ms. Moss: Are there like HOA rules or things out there about like limiting people to even just grow for their own selves?

Ms. Takakura: You know, that's the thing, we don't know because they're private documents so I'm not -- yeah, and that's why it's really hard. We can't -- we wouldn't be able to, you know, have the documents so we don't ... (inaudible)...

Ms. Moss: And you're saying that if we approve it with the amendments or with that clause that's saying it wouldn't affect prior documents, so that means whatever is in effect now wouldn't be changed. It's just going forward. New subdivisions or whatever couldn't have these that you're saying.

Ms. Takakura: That is correct. Yes.

Chair Buchanan: Okay. Thank you. Good questions, Commissioner Moss. Okay, any other Commissioners have questions for, if not, what they're asking us to do, and I know we never have to take public hearing, but commissioner -- I mean, Steph, our Corp Counsel, always say it's a good idea any to do that, this is a public hearing and so, since we have no more questions, they not asking us to vote on anything, that's right, yeah, commissioner -- I mean, Director McLean? You just was looking for feedback and having a public hearing, using the venue as a public hearing?

Ms. McLean: Chair, we're asking for your recommendation, which would go to the Council.

Chair Buchanan: Okay. So, I guess we can take one motion if we support this or if we have recommendations or we don't like it or whatever, so I'll open the floor up to a motion. The motion can be that we support the amendments. Go ahead, Commissioner Bridget.

Ms. Mowat: I wanna make a motion to recommend approval for the proposed bill to the Maui County Council.

Chair Buchanan: Thank you. Is there a second? Commissioner Machado?

Ms. Machado: ...(inaudible)... seconds. Second.

Chair Buchanan: Awesome. Okay, it's been moved and seconded to support this. Is there any discussion on the motion? Okay, seeing none.

Ms. Machado: I wanted to make a comment on the record.

Chair Buchanan: Okay. Go ahead.

Ms. Machado: That with the provisions that the County Council had scrub down and provided in the -- the actual resolution, it actually provides clarity on what is it exactly that is considered instruments or documents and it's a protection measure for the landowner if they wanna choose to do certain things. The accessory use is in addition to anything else that you may have to consider. But, to me, the biggest effort here is the clarification of commercial subsistence uses of your land to develop these agricultural productions and

you are able to do it even if you work -- even if you live in a subdivision, and we're clear about the County Council is very clear about invalid and unenforceable CCRs, so that's the clarification, it's very important, and I thank the County Council in their wisdom for moving this measure forward. And I will be voting yes for this motion. Thank you, Bridget, for the call of the motion.

Chair Buchanan: Yeah. Thank you very much for that, Commissioner Machado. Commissioner Bridget?

Ms. Mowat: No. I just wanted to say mahalo for that clarification, Colette. Mahalo.

Chair Buchanan: Okay. Awesome. If there's not any more discussion on the motion, I'll do a roll call. Commissioner Bridget?

Ms. Mowat: Aye.

Chair Buchanan: Commissioner Louella?

Ms. Albino: Aye.

Chair Buchanan: Okay. Commissioner Moss?

Ms. Moss: Aye.

Chair Buchanan: Commissioner Poepoe?

Mr. Poepoe: Aye.

Chair Buchanan: Commissioner Moore?

Mr. Moore: Aye.

Chair Buchanan: Commissioner Machado?

Ms. Machado: Yes.

Chair Buchanan: And the votes -- the Chair votes in the affirmative.

It was moved by Commissioner Bridget Mowat, seconded by Commissioner Colette Machado, then

VOTED: to recommend approval for the proposed bill to the Maui County Council.

(Assenting: L. Albino; L. Buchanan; C. Machado; W. Moore; K. Moss; B. Mowat;
L. Poepoe)
(Excused: D. Kelly; J. Pele)

Chair Buchanan: Motion carried unanimous. Thank you very much. Okay. Good job, Planning. Moving on. Under Agenda item B, Public Hearing, is item number 2:

Chair Buchanan read the following agenda item description into the record:

- 2. MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting Resolution No. 21-114 referring to the Molokai Planning Commission a proposed bill to amend Maui County Code Chapters 19.18 – B-2 Community Business District, 19.20 – B-3 Central Business District, and 19.31 – Public/Quasi-Public District to lower the maximum building heights. (J. Takakura)**

The entire text of the proposed bill for ordinance is available at:

<https://www.mauicounty.gov/DocumentCenter/View/128226/Resolution-21-114-proposing-to-lower-building-heights-in-B2-B3-and-P2-districts>

Chair Buchanan: Okay. Thank you. Jacky?

Ms. Takakura: Okay. Thank you, Chair Buchanan. So, this one I do have a PowerPoint so I'm going to share my screen now. Can I get a thumbs up? Can you see the white and blue?

Ms. Machado: Yes.

Ms. Takakura: Thank you. So, this is a proposed bill, again, from the County Council, and it's to amend the three chapters that were just mentioned about the maximum building heights, and so there's the B-2, which is community business district, and you do have a little bit of that zoning district on Molokai, B-3, central business district, which is only in Wailuku, and then public/quasi-public, P-2, is -- there's only two properties, one in Kihei and one in Wailuku right now, none on Molokai. So, the proposal is to reduce the heights of these three districts, as you can see, to 45 feet for all of them. Right now, B-2 can be 90 feet, B-3 can be 144 feet, and P-2 can be 90.

So, according to the County Council meeting on -- in July, it was explained that the resolution is about maximum building heights that are more appropriate for Maui than

B. PUBLIC HEARING (Action to be taken after public hearing.)

1. A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO PROHIBITING AGRICULTURAL RESTRICTIONS IN THE RURAL DISTRICT

MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting Resolution No. 21-113 referring to the Maui, Molokai, and Lanai 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. Preza: Okay. And with that we'll get started. We'll move on to item B.1., which is a bill for an ordinance amending comprehensive zoning ordinance relating to prohibiting agricultural restrictions in the rural district. And I'm not sure if Jacky or Jordan, you folks are commenting. I see Jacky; you're here. Hi. I'll pass it on to you.

Ms. Jacky Takakura: Is it okay if I get started? Okay, hello Lanai Planning Commission, Chair Preza, and Vice-Chair Kaye. For this first agenda item regarding rural district, I don't have a power point presentation. As you can see, it's a pretty short resolution from the County Council and what they're proposing is prohibit instruments of conveyance from restricting the growing and harvesting of any agricultural crop or product on lands in the county rural district. So the intent of the measure is to stop the prohibition of ag uses permitted in the rural districts through deed restrictions in all forms, including homeowners association, HOAs, or similar covenants, conditions and restrictions, or CC&Rs. The intent is similar to the existing prohibition on restricting permitted ag uses in the ag district.

Just as review, there's county and state zoning. And the purpose of the County rural district is to provide low density development, which preserves the rural character of certain areas and allow small step scale ag uses and keeping of animals to serve as a transition between standard residential or other urban density developments and agricultural lands. For State rural district, there's definitions in Hawaii Revised Statutes 205-2, and it's intended for areas of land composed primarily of small farms mixed with very low density residential lots. And it's for areas where a city like concentration of people, structures, streets and urban level, level of services are absent. And where small farms are intermixed with low density residential lot.

So the Planning Department's position is that we support the protection and diversification of agricultural operations in the county economic engine. In the context of food sustainability, it's really important, 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.

So we do propose a revision to the wording and I do have that in the memo report on page, the last page, page three. And we would prefer, if it were to read 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 agricultural crop or product on lands within the RU-0.5, RU-1, RU-2, RU-5, and RU-10 County rural districts shall be considered invalid and not enforceable. This section does not apply to any covenant or clause existing prior to the effective date of the ordinance establishing the section.

So as I mentioned, we do support the proposed bill. The commission can either recommend approval of the bill, recommend approval of the bill with amendments, recommend denial, or vote to defer action to gather information. You can see in the memo report, I do have maps of the different islands and where the rural zoning is located. And on page-nine of eleven, you can see there is one area near the harbor that is rural. So that is the area that would be affected for the island of Lanai. And it would be simply to say that any documents that, if there's an association, they can't prohibit ag. And that's all I have. We can answer any questions if you have any. And I actually do have a screenshot of that area in case you want to see it. That's all I have for you. Thank you.

Ms. Preza: Thanks so much, Jacky. Before commissioners we get to discussion, I'm going to open up public testimony since this is a public hearing item. Leilani, has anyone signed up to testify at this time?

Ms. Leilani Ramoran-Quemado: Thanks Chair. No one signed up to testify on this item.

Ms. Preza: Okay, thank you. Well, I'll open it up in case anyone would like to. At this time, you can unmute yourself. If not, is there anyone calling in via phone who would like to testify on this item? Okay, so we'll close public testimony for item B.1. And Commissioners, we can move to our discussion. Do you folks have any comments or questions about it? Any thoughts? Yes, Lisa, go ahead. Sorry, you're muted, Lisa.

Ms. Grove: Amateur hour. I'd like to see the, the visual that Jacky suggested she's, she'd be willing to share, please.

Ms. Preza: Jacky, if you wouldn't mind sharing.

Ms. Takakura: Give me about five seconds and I will --

Ms. Preza: Yeah. Thanks.

Ms. Takakura: -- screen share.

Ms. Kaye: While she's looking for that, I don't have a problem with the change in the language, but I would recommend taking out the word "considered" because I think it adds a layer of ambiguity. It raises the question of considered by whom. And it actually could be just fine to say the rural district shall be invalid and not enforceable.

Ms. Preza: Thanks, Sally. Is that, is that your only comment? Okay.

Ms. Kaye: Thank you. Thank you.

Ms. Preza: No, thank you. That's great. Okay, thanks for sharing. So I think what we're seeing at the kind of upper right, that's like the Kaunapali Highway, right Jacky? So I think we're all kind of generally familiar with the area. Did you guys or do you have any questions?

Ms. Kaye: Is that Aunty . . . (inaudible) . . . old house? The structure?

Ms. Preza: Family B, I'm not sure. The dirt road comes down, so it's -- yeah, so the highway continues and then --. Yeah.

Ms. Kaye: It's hard to tell exactly where that is, but, yeah it's pretty empty.

Ms. Preza: Okay. And Jacky, that's the only rural -- thank you for sharing -- that's the only rural district on Lanai zoned, zoned rural?

Ms. Takakura: Yes Chair Preza, that is correct.

Ms. Preza: Thank you. Yes, I'm okay with this as well, given that it's going to only impact that area, and, you know, agriculture is fine. So, so I have a question. So if we would like to --. I mean, sorry, Commissioners, do you have other questions or comments? I did have a question. So the, if we would like to recommend say like approval with amendments, would that be with, you know, the County's proposed amendments as well, and then maybe also Sally's recommendation to remove considered? That would be the course of action we would take correct?

Ms. Takakura: Yes, that is correct. We can fix the language. And then, of course, we do send it to Corporation Counsel to, for them to double check on, but yes, we would incorporate your revisions.

Ms. Preza: Okay. Thank you, Jacky. Commissioners, did anyone want to make a motion?

Ms. Kaye: Okay, I'll move that we recommend approval of the proposed bill to Maui County Council with the simple amendment of removing the word considered from the language proposed by the Planning Department.

Ms. Preza: Thank you, Sally. Would anyone like to second that?

Ms. Grove: Second.

It was moved by Ms. Sally Kaye, seconded by Ms. Elisabeth Grove, then unanimously

VOTED: To recommend approval of the proposed bill to Maui County Council with the simple amendment of removing the word considered from the language proposed by the Planning Department.

(Assenting: E. Grove, S. Kaye, S. Menze, S. Preza, C. Trevino)

(Excused: J. de la Cruz, Z. de la Cruz, N. Ropa, S. Samonte)

Ms. Preza: Lisa seconds. Is there any further discussion on this? If not, then we'll take a vote. Because we have quorum, I think, and I can actually — Chelsea, do you mind putting your camera again because then we can just vote. I can see you folks or I can call you guys individually like we've been doing. Okay so I'm all in favor please raise your hand. Okay, any abstentions? Any not in favor? Passes unanimously. So thank you very much.

2. A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO BUILDING HEIGHTS IN BUSINESS AND PUBLIC/QUASI-PUBLIC DISTRICTS

MS. MICHELE CHOUTEAU MCLEAN, AICP, Planning Director, transmitting Resolution No. 21-114 referring to the Maui, Molokai, and Lanai Planning Commissions a proposed bill to amend Maui County Code Chapters 19.18 – B-2 Community Business District, 19.20 – B-3 Central Business District, and 19.31 – Public/Quasi-Public District to lower the maximum building heights. (J. Takakura)

The entire text of the proposed bill for ordinance is available at <https://www.mauicounty.gov/DocumentCenter/View/128226/Resolution-21-114-proposing-to-lower-building-heights-in-B2-B3-and-P2-districts>

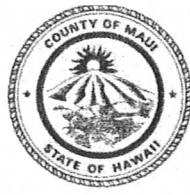
Ms. Preza: And we can keep the meeting moving along. And Sherry, I know, you said you have to leave an hour in, right? Sorry, you're muted.

Ms. Menze: Yes, I do. I'm sorry.

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

October 12, 2021

MEMORANDUM

TO: LANAI PLANNING COMMISSION
MOLOKAI PLANNING COMMISSION
MAUI PLANNING COMMISSION

FROM: MICHELE CHOUTEAU MCLEAN, AICP 
PLANNING DIRECTOR

SUBJECT: A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29 – RURAL DISTRICTS, MAUI COUNTY CODE, TO PROHIBIT INSTRUMENTS OF CONVEYANCE FROM RESTRICTING THE GROWING AND HARVESTING OF ANY AGRICULTURAL CROP OR PRODUCT

The attached Resolution 20-113 was adopted by the Council of the County of Maui on July 23, 2021, and transmits a proposed bill to amend Chapter 19.29, Maui County Code (MCC), relating to the Rural Districts, to prohibit instruments of conveyance from restricting the growing and harvesting of any agricultural crop or product on lands in the County Rural District.

The County Council briefly discussed the proposal at their meeting on July 23, 2021. The intent of the measure is to stop the prohibition of agricultural uses permitted in the Rural Districts through deed restriction in all forms, including homeowners' association (HOAs) or similar Covenants, Conditions & Restrictions (CC&Rs). The intent is similar to the existing prohibition on restricting permitted agricultural uses in the Agricultural District.

Background information

The purpose of the County Rural Districts is to implement the goals and policies of the Maui County general plan and community plans; to provide low density development which preserves the rural character of certain areas; to allow small-scale agricultural uses and the keeping of animals; and to serve as a transition between standard residential or other urban density development and agricultural lands. The intent of the Rural Districts is to promote proper planning of land use and infrastructure development.

There are six County Rural Districts with minimum lot sizes ranging from one-half acre to ten acres; each has density commensurate with the minimum lot size. For example, the RU-1 District has a minimum lot size of one acre and a density of one home per once acre. In addition, each lot can be improved with accessory dwellings (ohanas) pursuant to Chapter 19.35, MCC.

The State Rural District, as defined in Hawaii Revised Statutes §205-2, is intended for areas of land composed primarily of small farms mixed with very low density residential lots, with a minimum lot size of one-half acre and a density of not more than one house per one-half acre, except as provided by county ordinance pursuant to section 46-4(c), 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 lots. The State Rural District also includes golf courses, golf driving ranges, and golf-related facilities.

HOAs’ instruments of conveyance or CC&Rs are private documents; therefore, the Department’s administration and enforcement of this proposed measure would occur in select situations such as a proposed subdivision, a new application for entitlement or development in the County Rural Districts, or if a complaint is filed relating to agricultural use in the Rural Districts.

Consistency with Long-Range Plans

The 2010 Countywide Policy Plan provides broad goals, objectives, policies and implementing actions that portray the desired direction of the county’s future. It includes the following relevant objectives, policies and implementing actions:

- Page 76, Policy j: Protect rural communities and traditional small towns by regulating the footprint, locations, site planning, and design of structures.
- Page 76, Implementing Action a: Establish design guidelines and standards to enhance urban and rural environments.

The Maui Island Plan provides direction for future growth, the economy, and social and environmental decisions on the island through 2030. It is a policy foundation for day-to-day decision making. From the Maui Island Plan Chapter 7: Land Use pages 7-15 and 7-16:

- 7.2.1-Action 1: Coordinate with the State to develop and revise regulations for rural development, within the State Rural District, to encourage creative design and sustainable communities.
- 7.2.1-Action 4: Revise subdivision regulations to permit clustering and conservation subdivision design within the Rural Districts and extend Hawaii Right to Farm Act protections to rural subdivisions.

The Hawaii Right to Farm Act HRS Chapter 165 limits the circumstances under which farming operations may be deemed to be a nuisance, and extends to land that is zoned for industrial, commercial, or other nonagricultural use; provided that those processing operations

form an integral part of the agricultural operations. The law defines nuisance as any interference with reasonable use and enjoyment of land, including but not limited to smoke, odors, dust, noise, or vibration; provided that nothing in this chapter shall in any way restrict or impede the authority of the State to protect the public health, safety, and welfare.

Recommendation and Options

The Department of Planning supports the protection and diversification of agricultural 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 use of land in the future.

If the Commission supports the intention of the bill, the Department proposes the following revisions:

“19.29.045 Instruments of conveyance. [No] Any deed, lease, agreement of sale, mortgage, or other instrument of conveyance [may be] interpreted to contain any covenant or clause that restricts, directly or indirectly, the growing and harvesting of any agricultural crop or product on lands within the RU-0.5, RU-1, RU-2, RU-5, RU-10, and County rural districts shall be considered invalid and not enforceable. This section does not apply to any covenant or clause existing prior to the effective date of the ordinance establishing this section.”

The Department supports the proposed bill for ordinance.

The Commission has the following options:

1. Recommend approval of the proposed bill to the Maui County Council.
2. Recommend approval of the proposed bill with amendments to the Maui County Council.
3. Recommend denial of the proposed bill to the Maui County Council.
4. Vote to defer action on the proposed bill in order to gather specific additional information.

ORDINANCE NO. ____

BILL NO. ____ (2022)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29,
MAUI COUNTY CODE, TO PROHIBIT PRIVATE RESTRICTIONS
ON SMALL-SCALE AGRICULTURAL USES AND THE
KEEPING OF ANIMALS IN ANY RURAL DISTRICT

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

SECTION 1. Chapter 19.29, Maui County Code, is amended by adding a new section to read as follows:

“19.29.045 Private restrictions on small-scale agricultural uses and the keeping of animals. Any private restriction in any deed, agreement of sale, or other conveyance of land recorded in the bureau of conveyances limiting or prohibiting small-scale agricultural uses and the keeping of animals in any rural district is voidable. This section does not apply to any deed, agreement of sale, or other conveyance of land existing prior to the effective date of the ordinance establishing this section.”

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This Ordinance takes effect upon its approval.

APPROVED AS TO FORM AND
LEGALITY:

STEPHANIE M. CHEN
Deputy Corporation Counsel
County of Maui
LF2021-1601
2021-11-4 ord amd ch 19.29

Resolution

No. 21-113

REFERRING TO THE LĀNA'I, MAUI, AND
MOLOKA'I PLANNING COMMISSIONS A
PROPOSED BILL AMENDING CHAPTER 19.29,
MAUI COUNTY CODE, TO PROHIBIT
INSTRUMENTS OF CONVEYANCE FROM
RESTRICTING THE GROWING AND
HARVESTING OF ANY AGRICULTURAL CROP
OR PRODUCT

WHEREAS, the Council is considering a proposed bill amending Chapter 19.29, Maui County Code, to prohibit instruments of conveyance from restricting the growing and harvesting of any agricultural crop or product; 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 must review proposed land use ordinances and amendments and provide findings and recommendations to the Council; now, therefore,

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

1. That it refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29, MAUI COUNTY CODE, TO PROHIBIT INSTRUMENTS OF CONVEYANCE FROM RESTRICTING THE GROWING AND HARVESTING OF ANY AGRICULTURAL CROP OR PRODUCT," a copy of which is attached as Exhibit "1," to the Lāna'i Planning Commission, the Maui Planning Commission, and the Moloka'i Planning Commission for appropriate action under Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended;
2. That it respectfully requests that the Lāna'i, Maui, and Moloka'i Planning Commissions transmit their findings and recommendations to the Council as expeditiously as possible; and

Resolution No. 21-113

3. That certified copies of this resolution be transmitted to the Mayor, the Planning Director, the Lāna‘i Planning Commission, the Maui Planning Commission, and the Moloka‘i Planning Commission.

paf:wal:21-175c

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 19.29, MAUI COUNTY CODE, TO PROHIBIT INSTRUMENTS OF CONVEYANCE FROM RESTRICTING THE GROWING AND HARVESTING OF ANY AGRICULTURAL CROP OR PRODUCT

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

SECTION 1. Chapter 19.29, Maui County Code, is amended by adding a new section to read as follows:

"19.29.045 Instruments of conveyance. No deed, lease, agreement of sale, mortgage, or other instrument of conveyance may be interpreted to contain any covenant or clause that restricts, directly or indirectly, the growing and harvesting of any agricultural crop or product on lands within the RU-0.5, RU-1, RU-2, RU-5, RU-10, and County rural districts. This section does not apply to any covenant or clause existing prior to the effective date of the ordinance establishing this section."

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This Ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:wal:21-175a

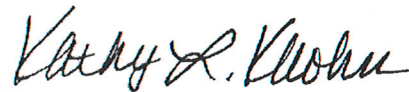
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is **HEREBY CERTIFIED** that **RESOLUTION NO. 21-113**, was adopted by the Council of the County of Maui, State of Hawaii, on the 23rd day of July, 2021, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS-FERNANDEZ Vice-Chair	Gabriel JOHNSON	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	Excused	Excused	Aye	Aye	Aye	Aye	Aye

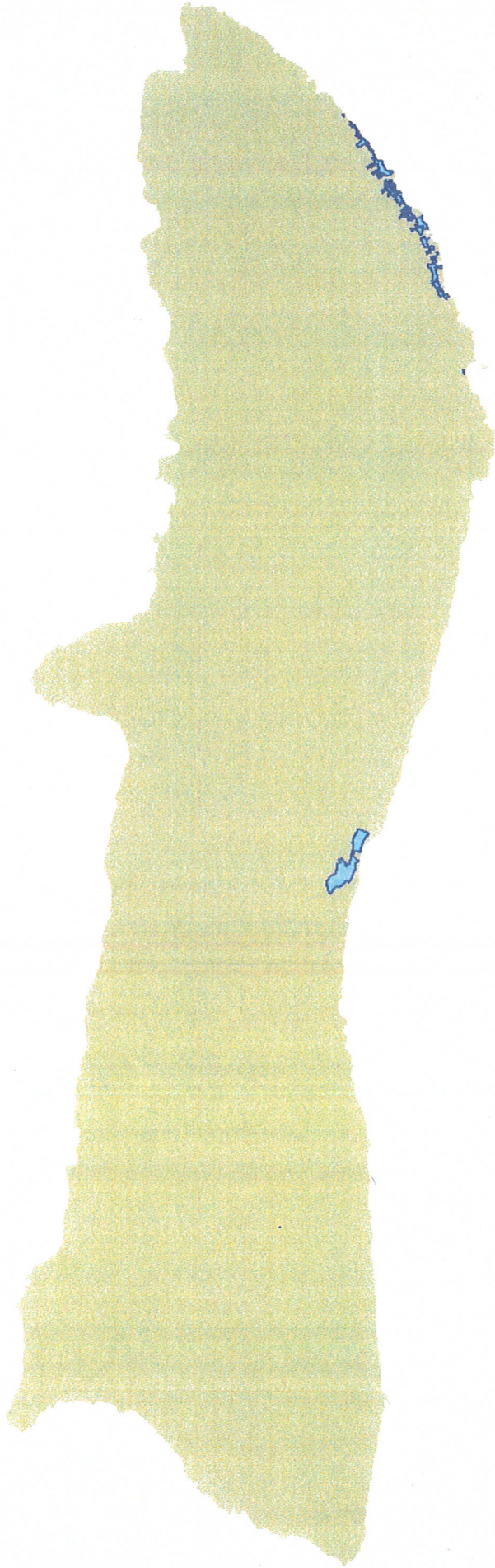


COUNTY CLERK

Rural



Rural



Rural

