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COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

September 13, 2019

Director of Council Services
Traci N. T. Fujita, Esq.

RECEIVED

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OFFICE OF THE
COUNTY CLERK

Mr. Josiah K. Nishita, County Clerk
Office of the County Clerk
County of Maui
Wailuku, Hawaii 96793

Dear Mr. Nishita:

**SUBJECT: A BILL TO AMEND TITLE 18, MAUI COUNTY
CODE, PERTAINING TO PUBLIC REVIEW OF
AGRICULTURE SUBDIVISIONS (PAF 19-254)**

May I request the attached proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING TITLE 18, MAUI COUNTY CODE, PERTAINING TO PUBLIC REVIEW OF AGRICULTURAL SUBDIVISIONS," be placed on the next Council meeting agenda.

Sincerely,

Handwritten signature of Kelly T. King in cursive.

KELLY T. KING
Council Chair

paf:kmat:19-254b

Attachment

COUNTY COMMUNICATION NO. 19-396

ORDINANCE NO. _____

BILL NO. _____ (2019)

A BILL FOR AN ORDINANCE AMENDING TITLE 18, MAUI COUNTY CODE,
PERTAINING TO PUBLIC REVIEW OF AGRICULTURAL SUBDIVISIONS

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

SECTION 1. This ordinance's purpose is to create a public review process for subdivisions of land within agricultural land use districts.

SECTION 2. Title 18, Maui County Code, is amended by adding a new chapter to be appropriately designated and to read as follows:

"Chapter 18.49

AGRICULTURAL SUBDIVISIONS

Sections:

- 18.49.010 Purpose.
- 18.49.020 Definitions.
- 18.49.030 Applicability.
- 18.49.040 Public review process.
- 18.49.050 Review criteria.

18.49.010 Purpose. The purpose of this chapter is to create a public-review process for subdivisions of land within the agricultural land use district.

18.49.020 Definitions. Whenever used in this chapter, unless the context otherwise requires:

"Agricultural subdivision" means any subdivision of land within the agricultural zoning district.

"Recorded document" means a legally binding instrument, executed by all parties, approved as to form and legality by the corporation counsel, recorded in the bureau of conveyances of the State of Hawaii or the land court of the State of Hawaii, or both, which runs with the land and binds and constitutes notice to all

subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the subject property.

18.49.030 Applicability. A. Notwithstanding any law to the contrary, this chapter applies to all agricultural subdivisions except for those exempt under subsection B.

B. The following agricultural subdivisions are exempt from this chapter:

1. Subdivisions by agencies of the federal, State, or County governments or utility companies with the power of eminent domain.

2. Subdivisions arising from federal or State designations as critical habitats, conservation easements, or agricultural easements.

3. Subdivisions of land into three or fewer lots. The created lots may not be further subdivided without council review.

4. Subdivisions created solely for the purpose of dedicating land to the federal, State, or County governments or to utility companies with the power of eminent domain or for subdivisions of land that is otherwise acquired by the federal, State, or County governments for public purposes.

5. Subdivisions created solely for designating roadway or access easements.

6. Consolidations and resubdivisions where no additional developable lots are created.

7. Subdivisions created for agricultural leases as provided under section 19.30A.080.

18.49.040 Public review process. Unless exempted in section 18.49.030, no agricultural subdivisions are permitted without the subdivider first obtaining the comments of the council in accordance with the following public review process:

A. Any person desiring to subdivide or consolidate land within the agricultural zoning district must apply to the director of public works [and environmental management] for subdivision approval.

B. The director of public works may not issue a preliminary approval of any agricultural subdivision, unless exempted in section 18.49.030, without first receiving the comments of the council in accordance with the following:

1. Prior to preliminary approval of any agricultural subdivision not exempted in section 18.49.030, and upon receipt of agency reviews and recommendations required by section 18.08.090, the director of public works must transmit

the agency reviews and all required information for preliminary approval to the council for public review.

2. The transmittal must also include a report from the department of planning analyzing the conformance of the proposed subdivision with the general plan, relevant provisions of the Maui County Code, and other laws relating to the use of land as required under section 18.04.030.

3. If the subdivision will result in residential uses, the report must include an analysis of the secondary impacts of the proposed subdivision, including:

- a. Increases in property value.
- b. Increases in population.
- c. Increases in housing.
- d. Increases in community services and facility needs.
- e. Increases in secondary jobs and employment generated.
- f. Compatibility with surrounding uses.
- g. If applicable, compatibility with the affordable housing program and comments from the department of housing and human concerns.
- h. Mitigation plans and comments from relevant governmental and community services agencies.

4. The report must also include an analysis of the social, cultural, economic, environmental, and ecological character and quality of the surrounding area, taking into consideration the purpose and intent of the agricultural zoning district.

C. All existing applications for agricultural subdivisions that have not yet received final subdivision approval under section 18.12.080, except those exempted in section 18.49.030, must be transmitted to the council for public review in accordance with subsection B.

D. The council or a council standing committee must conduct a public hearing on each application for an agricultural subdivision unless the subdivision is exempted in section 18.49.030. Notice of the public hearing must be published in a newspaper of general circulation two weeks prior to the hearing. After the public hearing, the council must transmit to the director of public works its comments on the application by resolution and the minutes of the public hearing within ninety days of receiving the application under subsection B(1). If the council does not transmit its comments by resolution and minutes of the public hearing within ninety days, the director of public works may act on the subdivision application. The review period specified in section 18.08.100(A)(2)

will be suspended during the pendency of the council's review under this section.

18.49.050 Review criteria. A. The subdivision must be consistent with title 18 of this code and applicable federal, State, and County building and development ordinances.

B. The planning director must require that the subdivision be consistent with the Maui County general plan; the purpose and intent of the agricultural zoning district, as set forth in section 19.30A.010 of this code; and chapter 205, Hawaii Revised Statutes.

C. The planning director must require that the subdivision promote the following:

1. Protection of prime, unique, and other important agricultural lands as demarcated by the Agricultural Lands of Importance to the State of Hawaii (ALISH) land classification system adopted by the State of Hawaii, board of agriculture.

2. Protection and maintenance of agricultural water and ditch systems.

3. Agricultural land conservation.

4. Preservation of public access ways to mauka (mountain) and makai (ocean) areas; and to areas traditionally used for subsistence, cultural, and religious uses in accordance with article XII, section 7, of the Hawaii State Constitution and case law.

5. Preservation of the following types of resources:

a. Wetlands (both tidal and fresh) and land that is generally inundated (land under ponds, marshes, and streams).

b. Lands with slopes exceeding 25 percent, or soils that are susceptible to landslides.

c. Lands under permanent easement prohibiting future development (including easements for drainage, access, and utilities).

d. Cultural and archaeological sites.

D. The various review agencies may recommend that the director of public works deny the subdivision or place additional conditions on the subject agricultural subdivision after consideration of comments and public testimony that is related to the agricultural subdivision's consistency with the criteria set forth in section 18.49.050.

SECTION 3. This ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:kmat:19-254a