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

June 8, 2021

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

RECEIVED

2021 JUN -9 PM 2:16

OFFICE OF THE
COUNTY CLERK

The Honorable Alice L. Lee
Council Chair
County of Maui
Wailuku, Hawaii 96793

Dear Chair Lee:

**SUBJECT: AMENDING THE COMPREHENSIVE ZONING
ORDINANCE TO ALLOW AGRICULTURAL CLUSTER
SUBDIVISIONS IN THE AGRICULTURAL
DISTRICT(PSLU-5)**

May I request that County Communication 15-152, from the Planning Director, transmitting a report on Resolution 14-114, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS," be placed on the next Council meeting agenda.

Sincerely,

Handwritten signature of Tamara A. M. Paltin in black ink.

TAMARA PALTIN, Chair
Planning and Sustainable Land Use
Committee

pslu:ltr:005ach01:dr

Enclosure

COUNTY COMMUNICATION NO. 21-275

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

April 23, 2015

Honorable Alan Arakawa
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

For Transmittal to:

Honorable Mike White, Chair
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Alan Arakawa

Mayor

4/29/15

Date

OFFICE OF THE
COUNTY CLERK

2015 APR 30 AM 10:23

RECEIVED

Dear Chair White:

SUBJECT: RESOLUTION NO. 14-114, ENTITLED "REFERRING TO THE LANA'I, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS"

Transmitted for your review and consideration is the Planning Director's Report and Recommendations related to Council Resolution No. 14-114 that includes a proposed bill to amend Maui County Code (MCC) Chapter 19.30A, Agricultural District, to encourage the clustering of smaller lots within a subdivision while preserving a larger, contiguous, "remnant" parcel dedicated to agricultural use in perpetuity (please see **Exhibit "1"** of the enclosed report). This is accomplished by allowing one-acre minimum lots sizes in the Agricultural District when creating an agricultural conservation lot that is protected in perpetuity for agricultural use. The proposed bill seeks to implement Maui Island Plan Action 7.1.1 – Action 4.

The proposed amendment is also intended to provide flexibility in site planning and design to:

1. Promote land conservation;
2. Preserve agricultural land resources; and
3. Maintain district character consistent with the General Plan.

Pursuant to Section 8-8.4 and Section 8-8.6 of the Charter of the County of Maui, the Planning Department submitted Resolution No. 14-114 to the Planning Commissions for their review and recommendations. The Maui and Lana'i Planning Commissions provided comments on the bill on February 10 and February 18, 2015, respectively. The Molokai Planning Commission provided comments on February 11 and April 22, 2015.

COUNTY COMMUNICATION NO. 15-152

Honorable Mike White, Chair
County Council
April 23, 2015
Page 2

The Planning Department supports the intent of Resolution No. 14-114. However, the Department finds that the proposed bill is unnecessarily complicated and could produce unintended consequences that could undermine the intent of the Agricultural District. As such, the Planning Department does not support the proposed bill in its current form. The Department recommends that the proposed bill be revised to limit the scale and size of agricultural clusters, and to ensure they are located in appropriate areas. Further, a maximum lot size of two (2) acres should be established for the smaller lots to ensure that clustering occurs.

Thank you for your consideration of this matter. Should further clarification be necessary, please contact John F. Summers, Division Administrator at Ext. 7734.

Sincerely,



WILLIAM SPENCE
Planning Director

Enclosures

xc: John F. Summers, Division Administrator
Simone Bosco, Senior Planner
Project File
PID Correspondence File
General File

WRS:SB:rhl

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***Resolution No. 14-114, Entitled "Referring to the Lana`i, Maui, and
Molokai Planning Commissions a Proposed Bill to Allow for the Creation of
Agricultural Conservation Lots"***

Planning Director's Report

**County of Maui
Planning Department**

April 2015

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BACKGROUND INFORMATION

In 1998, the Maui County Council adopted MCC Chapter 19.30A, Agricultural District, to respond to the proliferation of small lot subdivisions in the Agricultural District. Widespread fragmentation of large agricultural parcels into an unlimited number of two-acre lots was foreclosing options for viable farming and compromising valuable agricultural land. The purpose of the Agricultural District is to:

1. Implement Chapter 205, Hawaii Revised Statutes, and the goals and policies of the Maui County General Plan;
2. Promote agricultural development;
3. Preserve and protect agricultural resources; and
4. Support the agricultural character and components of the County's economy and lifestyle.

The 1998 legislation included a sliding scale to help preserve large tracts of farmable land. While the 1998 legislation did a good job of limiting the fragmentation of Maui County's agricultural land, additional tools are needed to provide further protection for the County's agricultural resources. The clustering of lots to preserve large areas of agricultural land for bonafide agricultural uses is one such tool.

This is recognized in the Maui Island Plan (MIP), which the Maui County Council adopted in December 2012. An objective of the MIP is to "significantly reduce the loss of productive agricultural lands." (MIP Objective 7.1.1) This is to be accomplished, in part, through MIP Action 7.1.1-Action 4 "Revise the Agricultural District Ordinance to allow for limited clustering and CSD, where appropriate."

Council Resolution No. 14-114 seeks to implement MIP Action 7.1.1-Action 4. It includes a proposed bill to amend Maui County Code (MCC) Chapter 19.30A, Agricultural District, to allow for the creation of agricultural conservation lots (**Exhibit "1"**). More specifically, the proposed bill adds Subsection 19.30A.030(H) under the District Standards, MCC Section 19.30A.030. The amendment proposes provisions for the creation of agricultural conservation lots that will be dedicated for agricultural use, in perpetuity, through a conservation easement or a unilateral agreement. The proposed Subsection 19.30A.030(H) describing the creation of an agricultural conservation lot is a **voluntary** alternative to some of the existing district standards within MCC Section 19.30A.030. The bill also proposes minor nonsubstantive amendments to MCC Section 19.30A.030 to correct grammar and usage.

Purpose and Intent of the Proposed Bill

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

Furthermore, the proposed bill is intended to provide flexibility in site planning and design to:

1. Promote land conservation;
2. Preserve agricultural land resources; and
3. Maintain district character consistent with the General Plan.

Key Highlights

The proposed amendment to MCC Section 19.30A.030, District Standards, provides for the ability to subdivide agriculturally zoned land into lots with a smaller minimum lot area of one (1) acre provided that:

1. For subject lots with an area of at least 92 acres, at least 70% of the lot area must be placed in an agricultural conservation lot. For parcels with a lot area of less than 92 acres, at least 60% of the lot area shall be placed in an agricultural conservation lot.
2. The design of the subdivision incorporates best management practices that support the purpose and intent of the Agricultural District.
3. Newly created agricultural conservation lots are limited to the permitted uses and structures set forth in MCC Section 19.30A.050.
4. An agricultural conservation lot shall be prohibited from changes in zoning, consolidation, or further subdivision, except as provided for in MCC Section 19.30A.040.

It is not the intent of the proposed amendment to allow for the creation of agricultural lots beyond the maximum lot limit established under MCC Subsection 19.30A.030(G).

REVIEWING AGENCIES

Two agencies provided substantive recommendations that the Planning Department has considered. The following table identifies the agencies that were included in the comment period, and which of those agencies provided comments.

FEDERAL	
NRCS-USDA-Maui	No comments received as of 1/23/2015
STATE AGENCIES	
Department of Agriculture, Honolulu	No comments received as of 1/23/2015
Department of Agriculture, Maui	No comments received as of 1/23/2015
Office of Planning	Comment letter dated 1/15/2015
COUNTY AGENCIES	
Department of Environmental Management	No comments received as of 1/23/2015
Department Public Works (DSA, Subdivisions)	Comment letter dated 1/8/2015
Department of Water Supply	"No comments" received dated 12/29/14

County Agencies:

1. Department of Public Works (DPW) Comments by memo dated January 8, 2015 (**Exhibit "2"**). Public Works has noted that agricultural zoned properties allow for special uses that may be restricted by the Agricultural Conservation Lot designation. This may be problematic should a government have a need for the property. Thus, Public Works recommends that exclusion for government use be added.
2. The Department of Water Supply has indicated they have no comments on the proposed bill on 12/29/14 (**Exhibit "3"**).

State Agencies:

1. State Office of Planning (SOP) Comments by letter dated January 15, 2015 (**Exhibit "4"**). The State Office of Planning (SOP) has specific concerns and recommendations regarding the proposed bill and the achievement of State Agricultural District objectives, and the proposal's stated objectives. SOP states the proposal could be a useful tool for agriculturally-zoned lands in the Rural District and expresses serious concerns about the proposed bill as currently drafted.

The Department of Environmental Management submitted comments after the comment period on 2/19/15 that stated they have no comments on the proposed bill.

PLANNING COMMISSION RECOMMENDATIONS

Maui Planning Commission

On February 10, 2015, the Maui Planning Commission conducted a public hearing and deliberated on the proposed bill. The Maui Planning Commission voted to approve the following recommendations and comments for your consideration:

1. There was discussion concerning the maximum allowable developable area for the construction of the permitted two farm dwellings on the conservation lot;
2. There was concern regarding what permitted uses would be allowed within the clusters and on the conservation lot and what special uses would be permitted within agricultural conservation lot subdivisions;
3. There was concern regarding allowing increased urbanization in agricultural areas currently designated for lower densities;
4. There was a question as to whether there would be a cap imposed on the maximum number of developable lots within clusters and what would be the appropriate number of clusters for each type of subdivision;
5. There was a question as to how the site design criteria will address the goal of protecting the best agricultural land, view corridors, and other environmental resources;
6. There was skepticism expressed over the enforceability of the bill to realistically promote and specifically prioritize farming over promoting the development of residential uses on agricultural land and the creation of open space;
7. There was a question as to if the Council can revisit the deleterious effect of the fragmentation of agricultural lands that has occurred due to the two (2) acre minimum lot size established by MCC 19.30A;

8. There was a recommendation that the Council establish very clear criteria for the appropriate location of the clusters, and establish clear restrictions on their allowance to eliminate the possibility of abuse, while still allowing an opportunity for flexible cluster design; and
9. There was a recommendation that the clustered parcels be taxed at their highest and best use and/or their market value.

Testimony

The Maui Planning Commission received one (1) letter of written testimony on the proposed bill which is attached as **Exhibit "7"**.

Molokai Planning Commission

On February 11, 2015, the Molokai Planning Commission conducted a public hearing and after due deliberation on the proposed bill, voted to defer action on the proposed bill to provide for more time to understand the proposal. The item was scheduled for their next regular meeting, which was on April 22, 2015.

On April 22, 2015, the Molokai Planning Commission conducted a regular meeting and after due deliberation on the proposed bill, the Molokai Planning Commission voted to approve the proposed bill with an exemption/exclusion for Molokai.

Listed below are some of the issues the Commissioners raised regarding the proposed bill during both meetings:

1. There was a concern regarding if an agricultural conservation subdivision would be any different from a conventional subdivision and a question as to why this mechanism is even needed;
2. There was a question as to if the 1-acre lots would be subject to farming requirements (i.e. farm plans);
3. There was a concern over if the proposed bill will affect the availability of large lot agricultural land for uses the community does not support;
4. There was a question as to how the proposed bill might affect the ability of Molokai residents to create family subdivisions and pass land down to their heirs;
5. There was a question as to how the proposal might affect the supply of affordable housing and if it could preclude the development of affordable housing in the future; the Commission wanted clarification on how this technique would ensure the delivery of much needed affordable housing;
6. There was a question as to how the proposal might affect existing owners of agricultural land;
7. There was concern about if the proposal would affect homesteads.
8. There were concerns that the clustered agricultural lots would not be used for agriculture; rather, they would be used for pseudo-agricultural estate purposes; and
9. There were concerns that the protections provided to the Agricultural Conservation Lot may not be durable.

Testimony

The Molokai Planning Commission received no written or verbal testimony on the proposed bill.

Lana`i Planning Commission

On February 18th, 2015, the Lana`i Planning Commission conducted a public hearing and after due deliberation on the proposed bill, the Lana`i Planning Commission voted 6-1 to approve the proposed bill with an exemption/exclusion for Lana`i.

The Lana`i Planning Commission members had a number of questions and concerns about the viability of the concept of agricultural conservation subdivisions for their island. The following highlights some of the concerns expressed:

1. There was concern over the viability of farming on one (1) acre lots;
2. There was a question as to if the bill could include restrictions on where the clusters for residences would be allowed;
3. There was a question as to how this concept would not further promote pseudo agricultural lots similar to what Maui has experienced;
4. There was concern that the bill would create urban densities on valued open spaces;
5. There was concern about the ability of the Lana`i community to have representation on how this concept might play out over the long-term when there is only one landowner/employer that dictates and decides its future;
6. There was a question as to who would monitor and enforce the uses and activities on the conservation lot; and
7. There was a recommendation that the bill include enforceable conservation lot subdivision restrictions and agreements.

The Lana`i Planning Commission expressed a concern that the vast majority of Lana`i's agricultural land is in a very large parcel and owned by a single landowner and thus this proposed provision may preclude their community's prerogative in how the bill is used. There was a concern that the clustering provision, in the context of Lana`i's unique land use composition, could lead to development occurring in locations where it is not wanted and at a scale that is undesirable. Concerns were also expressed about the feasibility of farming on one (1) acre lots and planning for water and other infrastructure should this bill be adopted. Despite these concerns, several Commission members seemed to see the merit of the proposal, but felt the proposal needed further study and perhaps special provisions for it to work well on Lana`i.

Testimony

The Lana`i Planning Commission heard testimony from four (4) individuals at the meeting on the proposed bill. No written testimony was received. Two of the testifiers raised questions and concerns and expressed reservations concerning the bill's approval and two testifiers were not in support of the proposed bill.

RELATIONSHIP TO THE GENERAL PLAN

The concept of CSD is supported by many of the goals, objectives, policies and actions within the General Plan. In summary, the General Plan supports the codification

of zoning amendments and the use of other land use tools and programs to improve the protection of agricultural lands. The following General Plan statements support the use of zoning amendments and other planning tools, such as conservation subdivision design, to advance the purpose and intent of the Agricultural District.

A. Countywide Policy Plan

A. *Protect the Natural Environment*

Goal:

Maui County's natural environment and distinctive open spaces will be preserved, managed, and cared for in perpetuity.

Policies:

- d.** *Utilize land-conservation tools to ensure the permanence of valued open spaces.*
- f.** *Protect the natural state and integrity of unique terrain, valued natural environments, and geological features.*
- g.** *Preserve and provide ongoing care for important scenic vistas, view planes, landscapes, and open-space resources.*

J. *Promote Sustainable Land Use and Growth Management*

Goal:

Community character, lifestyles, economies, and natural assets will be preserved by managing growth and using land in a sustainable manner.

Objective:

- 1.** *Improve land use management and implement a directed-growth strategy.*

Policies:

- i.** *Establish and maintain permanent open space between communities to protect each community's identity.*

Objective:

- 2.** *Improve planning for and management of agricultural lands and rural areas.*

Policies:

- a.** *Protect prime, productive, and potentially productive agricultural lands to maintain the islands' agricultural and rural identities and economies.*
- b.** *Provide opportunities and incentives for self-sufficient and subsistence homesteads and farms.*
- c.** *Discourage developing or subdividing agriculturally designated lands when non-agricultural activities would be primary uses.*

Objective:

- 3.** *Design all developments to be in harmony with the environment and to protect each community's sense of place.*

Policies:

- c. *Protect and enhance the unique architectural and landscape characteristics of each Community Plan Area, small town, and neighborhood.*
- j. *Protect rural communities and traditional small towns by regulating the footprint, locations, site planning, and design of structures.*

Objective:

- 4. *Improve and increase efficiency in land use planning and management.*

Policies:

- a. *Assess the cumulative impact of developments on natural ecosystems, natural resources, wildlife habitat, and surrounding uses.*
- d. *Promote creative subdivision designs that implement best practices in land development, sustainable management of natural and physical resources, increased pedestrian and bicycle functionality and safety, and the principles of livable communities.*

B. Maui Island Plan

The *Maui Island Plan (MIP)* discusses the use of CSD as a mechanism that will provide an opportunity to protect agricultural resources and promote agricultural activities within the Agricultural District. On page 7-5 within the Agricultural Lands section, the MIP states:

“Agricultural land management can be enhanced through a directed growth strategy that identifies areas appropriate for development, utilizing tools for agricultural protection such as zoning, transfer and purchase of development rights (TDR/PDR), and Conservation Subdivision Design (CSD).”

The Agricultural Zoning District (Chapter 19.30A, MCC) requires a distribution of minimum lot sizes that range from two to forty acres for new subdivisions. The required distribution provides a greater diversity of lot sizes, and has decreased fragmentation of agricultural lands. The Agricultural District Ordinance could be reviewed and revised to further decrease fragmentation by considering such tools as decreasing the number of 2-acre lots, or clustering of the 2-acre lots into smaller parcels, or developing CSD provisions as described below.”

Under Objective 7.1.1, Agricultural Lands, the MIP provides policy support and an implementing action for the establishment of CSD. The implementing action is careful to note that a **limited** amount of clustering be allowed **where it is appropriate**.

Policies:

- 7.1.1.a *Allow, where appropriate, the clustering of development on agricultural lands when approved as a CSD plan or similar approval mechanism.*

7.1.1.b *Require, where appropriate, the review and approval of CSD plans prior to the subdivision of agricultural land.*

Implementing Actions:

7.1.1-Action 4 *Revise the Agricultural District Ordinance to allow for limited clustering and CSD, where appropriate.*

Within the Rural Areas section of the *Maui Island Plan*, CSD practices are discussed in greater detail on page 7-13:

“2. Conservation Subdivision Design (CSD): Applying conventional subdivision models to rural lands typically results in low-density residential development sprawl, which alters the natural landscape and can negatively impact community character. CSD offers an alternative approach to regulating the subdivision process on rural lands. This alternative allows for the clustering of development within a portion of a site while the remainder of the land remains undeveloped and protected. Development potential is not taken away from the developer; rather it is concentrated within a smaller portion of the parcel, allowing for the simultaneous preservation of agricultural land, environmental resources, and open space.”

On page 7-6, the MIP states that the Agricultural District Ordinance could be reviewed and revised to further decrease fragmentation by considering such tools as decreasing the number of 2-acre lots, or clustering of the 2-acre lots into smaller parcels, or developing CSD provisions as described below:

“CSD requires the preparation of a detailed site assessment to identify important natural resources, cultural sites, agricultural lands, and open space to be preserved during subdivision. Based upon the assessment, a CSD plan is prepared to minimize environmental impacts, protect agricultural land and open space for future generations, reduce the cost of infrastructure, and preserve the land’s natural character. CSD plans are typically required for agricultural subdivisions that exceed a specified number of lots. CSDs should be sparingly used so as not to promote further development of agricultural lands.”

Figure 7-2 below found within the MIP on page 7-14 depicts a traditional subdivision on the left in comparison to the design of a CSD on the right. The graphic depicts how a larger conservation lot preserves larger areas of contiguous and undivided agricultural land for farming and other viable agricultural uses, while simultaneously providing for clustered housing.

*Development
of Rural
Scale
Infrastructure*

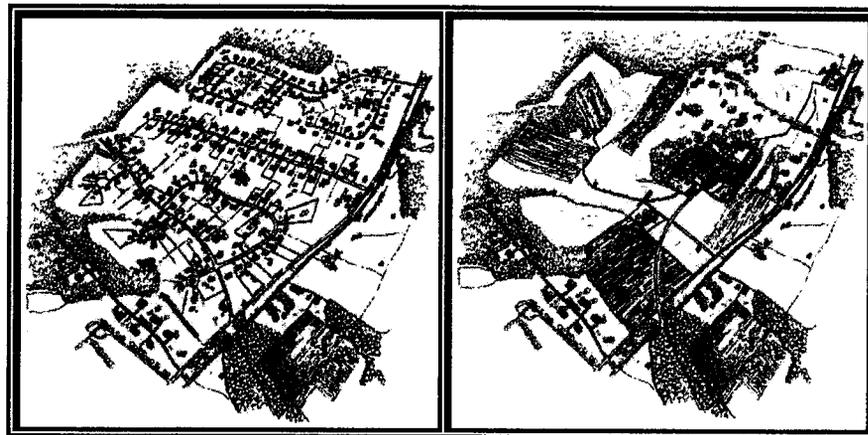


Figure 7 - 2: Conventional Subdivision Design vs. Conservation Subdivision Design. Source: Arendt, Randall. 1994. Rural By Design. American Planning Association Planners Press. Chicago, Illinois.

Under Objective 7.2.1, within the Rural Lands section, the MIP provides policy support and an implementing action for the establishment of CSD:

Policy:

7.2.1.c Encourage or require, where appropriate, CSDs and the use of green spaces/natural separations to protect the character of rural landscapes.

7.2.1-Action 4 Revise subdivision regulations to permit clustering and CSD within the Rural Districts and extend Hawaii Right to Farm Act protections to rural subdivisions.

C. Community Plans

The concept of CSD is supported by many of the goals, objectives, policies and actions within the Community Plans (see **Exhibit "5"**).

ANALYSIS

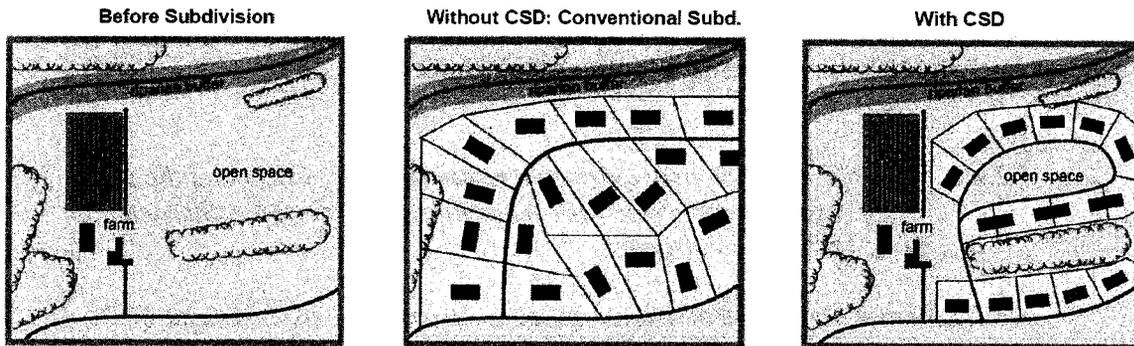
Conventional vs. Agricultural Clustered Subdivisions

Conventional subdivisions within the Agricultural District can consume large amounts of agricultural land, fragment open spaces, and thus render them inefficient for agricultural operations, compromise wildlife habitat corridors, and foreclose opportunities for future farming on large contiguous areas of agricultural land. When residential-like subdivisions encroach into agricultural districts, rising land values and nuisance complaints can discourage the continuation of farming. Conservation subdivision design (CSD), sometimes termed agricultural clustered subdivision, is one useful tool to protect

agricultural land through alternative zoning standards. Agricultural clustered subdivisions allow lots to be grouped together to preserve large tracts of farmland for viable agriculture use or the protection of environmental resources. This tool has been used in other jurisdictions across the country that have experienced development pressure due to the encroachment of residential uses on rural and agricultural lands.

Conventional subdivisions on agricultural land often fail to: 1) protect productive agricultural land from residential development; 2) ensure a proper balance of different types of land uses to meet the needs of the future; 3) minimize land use conflicts arising from non-farm uses near active farms, and 4) control the escalation of property values of farmland and reduce taxes paid by farmers, and thus fail to protect agricultural lands. This was experienced in the 1990s when Maui County saw a proliferation of small lot agricultural subdivisions, particularly in the Pa`ia-Ha`iku, Makawao-Pukalani-Kula, and West Maui Community Plan areas.

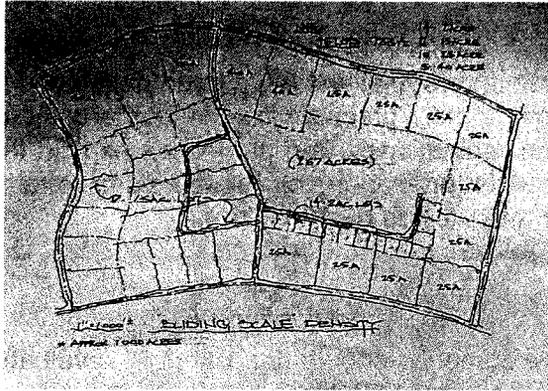
The proposed legislation to allow for the creation of an agricultural conservation lot with clustering provides an alternative to conventional agricultural subdivision practices. The following figures depict the concept of an agricultural clustered subdivision (**Figure 1**). CSD provisions promote design flexibility related to the minimum lot size, setbacks, and frontage, and preserve large contiguous tracts of agricultural land while still allowing for clustered development.



Source: Town of Rehoboth

Figure 1: Before and After: Conventional Subdivision Development compared to Conservation Subdivision Design (CSD).

Figure 2 represents a conventional subdivision design pursuant to the “sliding scale” in MCC Subsection 19.30A.030(G). In this case, a 1,000-acre parcel is subdivided into the permitted 46 lots with lot sizes ranging from two to 40 acres as required by the “sliding scale.” **Figure 3** depicts the same 1,000 acre parcel subdivided into 45 small lots and an agricultural conservation lot. The clustered lot subdivision in **Figure 3** preserves a comparatively larger amount of open space for natural resource protection or farming.



Source: Rory Frampton
Figure 2: Sliding Scale

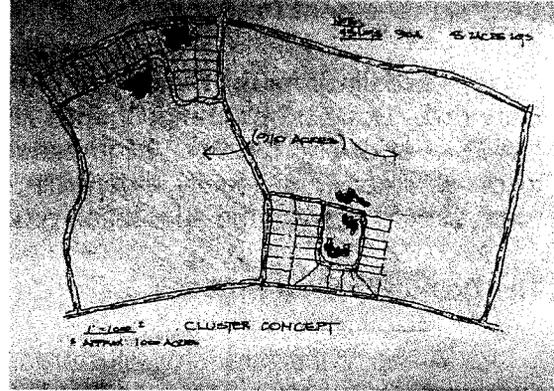


Figure 3: Cluster Concept

The sliding scale in the proposed language of MCC Subsection 19.30A.030(H) does not increase the overall number of lots currently allowed pursuant to Subsection 19.30A.030(G). However, the proposed draft of MCC Subsection 19.30A.030(H) allows for a deviation in the minimum lot size to as small as one (1) acre. Thus, while the overall number of lots will not change if an agricultural conservation lot is created via Subsection 19.30A.030(H), the distribution of lot sizes could change substantially. As proposed, depending on the size of the subject lot, at least 60% to 70% of the original subject lot must be dedicated in perpetuity to agriculture through the creation of an agricultural conservation lot. The newly created agricultural conservation lot shall be limited to the permitted uses and structures set forth in MCC Section 19.30A.050.

Although it is presumed that clustering is meant to be a part of the proposed bill, this is not expressly stated within the proposed language. Thus, while the overall density of an agricultural conservation lot subdivision may be no greater than what is currently permitted pursuant to MCC Section 19.30A.030, the proposed language is not explicitly clear that newly created smaller lots will be clustered in a pattern that is consistent with the goal of promoting agriculture and protecting agricultural land. As such, the conservation lot subdivision could produce a scattered pattern of one (1) acre lots, thus defeating the proposed bill's goal of preserving large tracts of agricultural land.

To achieve best practice for agricultural conservation subdivisions, while providing an overall improved land use pattern, an additional provision is needed in the legislation that expressly requires clustering. True clustering could be achieved by amending the proposed bill to include a maximum lot size of two acres for the smaller clustered lots.

It is important to note that if the original lot from which an agricultural conservation lot is created is less than 25 acres, the size of the agricultural conservation lot may be too small for viable commercial agricultural operations.

The Department had developed a revised draft of the proposed legislation for Planning Commission review that simplified the language, clarified the process, and made it easier to enforce and administer (**Exhibit "6"**).

Best Management Practices

Guidelines for the creation of rural clustering regulations have been developed by Gary Pivo, Robert Small, and Charles R. Wolfe to help practitioners overcome common pitfalls of agricultural conservation subdivision regulations¹. The guidelines explain that to be workable and legally defensible, a cluster ordinance, or related administrative rules, should address the application process and provide design criteria.

The Design Review Process

Areas considered for clustered developments should be carefully evaluated through a design review process that focuses on preserving the agricultural character of the landscape as its primary goal. The location, net density, and design of cluster groups must be evaluated during the cluster subdivision design process to ensure that cluster developments will avoid an undifferentiated housing pattern and continuous homogenous pattern of house lots along a road with no integration of open space within the development. The size and number of cluster groups should be limited to ensure that the agricultural character of the area is preserved and that infrastructure impacts do not negatively affect the area. It is also important to ensure access to the larger contiguous tract of agricultural land.²

The following steps should take place to ensure that the cluster subdivision is consistent with the purpose and intent of the agricultural district and to mitigate the impacts of the subdivision:

1. Identify and analyze existing conditions;
2. Delineate buffer areas, important agricultural land and significant environmental, cultural, and open space resources to be protected;
3. Establish the location of the agricultural conservation lot prior to designating the location of the clustered lot pattern and street layout;
4. Preserve open space adjacent to existing perimeter roadways; and
5. Screen new housing with topography or vegetation.

Three design principles, if applied, help to differentiate a good cluster subdivision from a conventional subdivision:

1. Limit the size and number of cluster groups;
2. Locate open space between cluster groups; and
3. Require a separation to the extent practicable between cluster groups.

There are additional design guidelines that should be incorporated into the subdivision design review process to ensure that developments are designed in harmony with their surroundings and minimize their potential negative impacts. Design principles should guide the orientation and development of buffers, farmsteads, street systems, storm water management, wastewater management, landscaping, and the preservation of cultural and historical features. These principles should be discussed

¹ Gary Pivo, Robert Small, and Charles R. Wolfe. 1990. *Rural Cluster Zoning: Survey and Guidelines, Land Use Law*. 3-10.

² Southeastern Wisconsin Regional Planning Commission. *Rural Cluster Development Guide, Planning Guide Number 7*. Dec 1996

with the applicant as part of a pre-consultation process and ultimately be addressed within an application for an agricultural clustered subdivision.

Relationship of Proposed Bill to Best Practice

Although the Planning Department supports the overall concept of cluster subdivision design, the Department has a number of concerns regarding the proposed bill as it is currently written:

1. There is no express provision requiring that the smaller lots be clustered;
2. The best management practices (BMPs) to be incorporated are not described or defined;
3. Subdivision design criteria and procedures are needed to optimize the final land use pattern of the conservation lot subdivision;
4. It is unclear if the smaller lots must be created concurrently through a new subdivision when the agricultural conservation lot is created;
5. The addition of a second sliding scale is confusing and unnecessary;
6. It is difficult to enforce restrictions and conditions for a conservation easement;
7. The number of lots in a clustered subdivision should be limited to ensure the subdivision is of an appropriate scale; and
8. The clustered lots should be limited to a maximum lot size of two (2) acres to ensure that clustering occurs.

CONCLUSIONS AND FINDINGS

The Planning Department supports the intent of the proposed bill. However, the Planning Department finds that the proposed bill is unnecessarily complicated and could produce unintended consequences that could undermine the intent of the Agricultural District if adopted in its current form. As such, the Planning Department does not support the proposed bill, as proposed, in **Exhibit "1"**.

The Department finds the focus of the proposed legislation should be on the clustering of smaller lots to achieve conservation of the larger remainder area of an agricultural conservation subdivision rather than just the creation of an agricultural conservation lot. The proposed bill should be consistent with adopted policies contained within the General Plan. Specifically, the Maui Island Plan states that clusters should be limited in scale and size, and allowed where appropriate (MIP Policies 7.1.1.a, 7.1.1.b, and MIP Action 7.1.1-Action-4). Further, a maximum lot size of two (2) acres should be established to ensure that clustering occurs.

S:\ALL\LONGR\John\JFS\AGPR\Ag Cluster Ord\Report to Council\Report to Council041615.doc

Resolution

No. 14-114

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

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

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

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

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

APPROVED AS TO FORM AND LEGALITY



Department of the Corporation Counsel
County of Maui

paf:jkm:14-065b

EXHIBIT 1

ORDINANCE NO. _____

BILL NO. _____ (2014)

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

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

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

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

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

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

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

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

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

EXHIBIT "1"

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

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

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

paf:jkm:14-065a

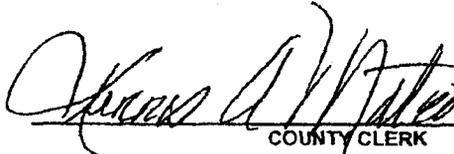
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 14-114 was adopted by the Council of the County of Maui, State of Hawaii, on the 17th day of October, 2014, by the following vote:

MEMBERS	Gladys C. BAISA Chair	Robert CARROLL Vice-Chair	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	Donald S. GUZMAN	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye	Aye



COUNTY CLERK

COUNCIL OF THE COUNTY OF MAUI
**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

October 17, 2014

Committee
Report No. _____

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

Chair and Members:

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

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

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

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

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

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

COUNCIL OF THE COUNTY OF MAUI
**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

Page 2

Committee
Report No.

14-125

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

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

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

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

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

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

COUNCIL OF THE COUNTY OF MAUI
**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

Page 3

Committee
Report No. 14-125

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

Your Economic Development, Energy, Agriculture, and Recreation Committee **RECOMMENDS** that Resolution 14-114, attached hereto, entitled "REFERRING TO THE LANAI, MAUI, AND MOLOKAI PLANNING COMMISSIONS A PROPOSED BILL TO ALLOW FOR THE CREATION OF AGRICULTURAL CONSERVATION LOTS", be **ADOPTED**.

COUNCIL OF THE COUNTY OF MAUI
**ECONOMIC DEVELOPMENT, ENERGY,
AGRICULTURE, AND RECREATION
COMMITTEE**

Page 4

Committee
Report No. 14-125

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



DON S. GUZMAN, Chair

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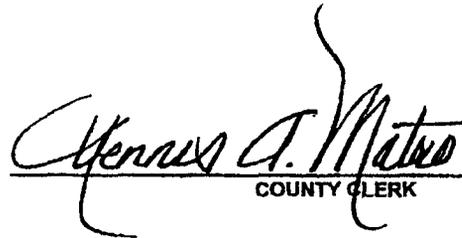
COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 14-125 were adopted by the Council of the County of Maui, State of Hawaii, on the 17th day October, 2014, by the following vote:

MEMBERS	Gladye C. BAISA Chair	Robert CARROLL Vice-Chair	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	Donald S. GUZMAN.	G. Riki HOKAMA	Michael P. VICTORNO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye	Aye



COUNTY CLERK

ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGDAG-ANDAYA
Deputy Director

Telephone: (808) 270-7845
Fax: (808) 270-7955



COUNTY OF MAUI
DEPARTMENT OF PUBLIC WORKS

200 SOUTH HIGH STREET, ROOM NO. 434
WAILUKU, MAUI, HAWAII 96793

GLEN A. UENO, P.E., P.L.S.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

January 8, 2015

MEMO TO: WILLIAM R. SPENCE, PLANNING DIRECTOR

FROM: DAVID C. GOODE, DIRECTOR OF PUBLIC WORKS

A handwritten signature in black ink, appearing to read "David C. Goode".

SUBJECT: **RESOLUTION NO. 14-114 TO AMEND CHAPTER 19.30A -
AGRICULTURAL DISTRICT - TO ALLOW FOR THE CREATION OF
AGRICULTURAL CONSERVATION LOTS**

We reviewed the subject resolution and have the following comment:

Comment from the Highways Division:

1. Agricultural-zoned properties allow for special uses that may be restricted by the Agricultural Conservation zoning designation. This may be problematic should a government have need for the property. We suggest the consideration of an exclusion for government use.

If you have any questions regarding this memorandum, please call Rowena M. Dagdag-Andaya at 270-7845.

DCG:RMDA:da

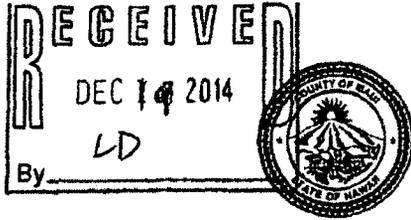
xc: Highways Division
Engineering Division

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ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



RECEIVED
2014 DEC 18 AM 9:05
DEPT. OF WATER SUPPLY
COUNTY OF MAUI

COUNTY OF MAUI

DEPARTMENT OF PLANNING

December 16, 2014

TRANSMITTAL

4 115 16

STATE AGENCIES	
<input checked="" type="checkbox"/>	Dept of Agriculture, Honolulu
<input checked="" type="checkbox"/>	Dept of Agriculture, Maui
<input checked="" type="checkbox"/>	Office of Planning
FEDERAL AGENCIES	
<input checked="" type="checkbox"/>	NRCS-USDA-Maui

COUNTY AGENCIES	
<input checked="" type="checkbox"/>	Dept of Environmental Management (2)
<input checked="" type="checkbox"/>	Dept Public Works (DSA, Subdivisions)
<input checked="" type="checkbox"/>	Dept of Water Supply
<input checked="" type="checkbox"/>	ZAED, Zoning & Enforcement Division

DESCRIPTION: Resolution NO. 14-114 referred by Councilmember Don Guzman of the Maui County Council to the Maui, Molokai and Lānaʻi Planning Commissions for an AMENDMENT TO CHAPTER 19.30A - Agricultural District, of the Maui County Code, to Allow for the Creation of Agricultural Conservation Lots

TRANSMITTED TO YOU ARE THE FOLLOWING:

Maui County Council Resolution No. 14-114

THESE ARE TRANSMITTED AS CHECKED BELOW:

For Your Comment, Additional Comment and/or Updated Recommendation

Please identify any comments you would like the Maui County Council to consider in their deliberations on the attached proposed resolution. Submit your comments directly to me by **January 8, 2015**. A comment box is also provided to assist you. If you have no comment, please sign the "No Comment" box and fax to (808) 270-7634.

Thank you for your time and assistance. For additional clarification, please contact me at simone.bosco@mauicounty.gov or phone (808) 270-5570.

Sincerely,

SIMONE BOSCO, Staff Planner

Attachment

xc: John Summers, Planning Program Administrator
PID Correspondence File
Project File
General File

SB:jlj

S:\ALL\PID\Ag Cluster Resolution\Agency Transmittal.doc

AGENCY NAME		PHONE	
------------------------	--	--------------	--

NO COMMENT			
Signed:	<i>Paul J. Meyer</i>	Dated:	<i>12/29/14</i>
Print Name:	<i>Paul Meyer</i>	Title:	<i>Deputy Director</i>

ADDITIONAL COMMENT / RECOMMENDATION BOX			
Signed:		Dated:	
Print Name:		Title:	



OFFICE OF PLANNING STATE OF HAWAII

235 South Beretania Street, 6th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804

DAVID Y. IGE
GOVERNOR

LEO R. ASUNCION
ACTING DIRECTOR
OFFICE OF PLANNING

Telephone: (808) 587-2846
Fax: (808) 587-2824
Web: <http://planning.hawaii.gov/>

Ref. No. P-14627

January 15, 2015

DEPT. OF PLANNING
COUNTY OF MAUI

JAN 21 2015

RECEIVED

Mr. William Spence, Director
Planning Department
County of Maui
2200 Main Street, Suite 315
Wailuku, Hawaii 96793

Dear Mr. Spence:

Subject: Maui County Council Resolution No. 14-114,
Referring to the Lanai, Maui, and Molokai Planning Commissions A Proposed
Bill to Allow for the Creation of Agricultural Conservation Lots

The Office of Planning (OP) has reviewed the subject bill and Committee Report No. 14-125. The bill proposes to promote land conservation, preserve agricultural lands, and maintain district character by establishing a mechanism to create and cluster smaller agriculturally-zoned lots in conjunction with the County's Agricultural District's sliding scale for permissible lots.

In concept, the proposal would promote flexibility in site planning to achieve greater efficiency in infrastructure delivery and more effective open space preservation that are critical to the preservation of district character and rural landscapes. As such, it could be a useful tool for agriculturally-zoned lands in the State Rural District. While we strongly support the concept of clustering in the State Rural and Agricultural Districts, OP has serious concerns about the impact of the proposal as written if used on lands in the State Agricultural District.

The primary purpose of the State Agricultural District is to promote long-term agricultural use of Hawaii's agricultural lands. In order to do this, the regulatory system needs to discourage: (1) the encroachment of higher-value non-farm uses, to keep land affordable for farming; (2) the fragmentation of agricultural land, to ensure the greatest flexibility for crop selection and farming operations; and (3) the creation of barriers that would restrict farmer access to and farming operations on agricultural lands.

OP has the following specific concerns and recommendations regarding the proposal and the achievement of State Agricultural District objectives, as well as the proposal's stated objectives.

EXHIBIT 4

Mr, William Spence, Director
January 15, 2015
Page 2

1. Permissible uses and the value of agriculturally-zoned land. The proposal does not address the problem inherent in allowing a wide range of permissible uses on agriculturally-zoned land—in particular, the provision for two farm dwellings per lot without requiring evidence of bona fide agricultural use of the property, as is required for farm labor dwellings in subsection 19.30A.050(B)2, Maui County Code. Thus, the ability to create smaller, affordable lots with two farm dwellings allowable per lot could promote non-farm dwellings on agriculturally-zoned lands and exacerbate rising land values for agricultural lots, rendering these lots unaffordable to farmers.
2. Access to and affordability of agricultural conservation lots for farmers/farming. Several issues arise related to the intended objective of agricultural use of the conservation lots. First, unless the development potential for this lot is removed and uses are strictly limited to farming activities, the proposed restrictions on the agricultural conservation lot will not necessarily make that land any more affordable or any more likely to be used for farming. The existence of a private conservation easement does not guarantee that the land will be farmed or made available to farmers; the smaller the conservation lot and its proximity to non-farm residential uses, the less likely the land will be farmed. Without a robust market for farmable lots under conservation easements, private efforts to put these conservation lots in the hands of farmers will stall.

Enforcement of private conservation easements is also problematic, as private enforcement may not be sufficient to prevent non-conforming uses. OP believes that the County unilateral agreement (UA) is the better tool to achieve the stated objective of agricultural use of the conservation lot. The UA provides a mechanism to monitor agricultural use of the lots and match them with County agricultural development initiatives.

3. Fragmentation of agricultural lands. OP is also concerned that there is no explicit provision to ensure that the best agricultural lands are reserved for the agricultural conservation lot. Furthermore, as currently written in the permissible lots table, the proposal could result in many small, dispersed agricultural conservation lots that would be difficult for farmers to access and farm efficiently.

The first concern could be addressed through proposed subsection (H)3.a.iii, page 3 of the bill: i.e., the best management practices adopted would include site or design criteria promoting maximum protection of good agricultural lands, adequate access to the conservation lot, contiguity of conservation lots between neighboring parcels or within a region, etc.

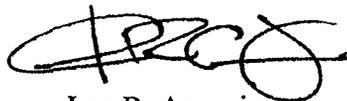
Mr, William Spence, Director
January 15, 2015
Page 3

OP strongly recommends that the permissible lots table be amended to establish a minimum threshold for eligible parcels to avoid fragmentation of agricultural lands into dispersed, one- to five-acre agricultural conservation lots. The average lot size of the State Department of Agriculture's State Agricultural Parks Program is just over 15 acres. This provides a more appropriate minimum lot size for the agricultural conservation lot, which translates into a minimum threshold size of 20-25 acres for use of this subdivision option.

4. Achievement of land preservation/cluster objective. The bill is silent on whether the lots are to be clustered, although clustering is the key to achieving infrastructure and land conservation objectives. OP recommends that the bill be amended to favor or require the clustering of lots to the extent physically feasible. Consideration could be given to providing an incentive bonus for those subdivisions that are comprised of clustered lots all of the minimum lot size, with an agricultural conservation lot that conforms to or exceeds the minimum percentage required.
5. Clarification of bill language.
 - a. Page 3, subsection (H)1: Should the reference be to subsection C?
 - b. Page 4, Subdivision table: Clarify the language, "15, plus 1 additional lot for each 40 acres above 92 acres (not to exceed 17 lots)", means a total of 17 lots, capped at two in addition to the 15 allowed.

Thank you for the opportunity to review and comment on the proposed bill. Please contact Ruby Edwards, Land Use Division, (808) 587-2817, redwards@dbedt.hawaii.gov, if you have any questions.

Sincerely,



Leo R. Asuncion
Acting Director

- c: Scott Enright, Department of Agriculture (Attn: Earl Yamamoto)
Dan Orodener, State Land Use Commission

Exhibit "5"

Relationship to the Community Plans

The concept of Conservation Subdivision Design (CSD) is supported by many of the goals, objectives, policies and actions within the Community Plans. The following is a comprehensive list of all supporting Community Plan implementing actions for the use of CSD, excluding the Kaho`olawe Community Plan.

Community Plans

Kihei-Makena Community Plan

Evaluate and modify present zoning and subdivision ordinances to incorporate land use and design guidelines.

West Maui Community Plan

Identify and inventory exceptional open space resources and viewsheds for protection via covenants, easements, and other planning tools.

Develop incentives and requirements for energy efficient building design and site development practices, including modifications to building, zoning, and subdivision codes.

Adopt ordinances to establish appropriate standards to insure that agricultural lands will be used for agricultural purposes or remain available for future agricultural uses.

Wailuku-Kahului Community Plan

Evaluate and modify present zoning and subdivision ordinances to incorporate the land use and design guidelines as well as other recommendations incorporated herein.

Initiate a study of minimum lot sizes in agricultural zones which will encourage viable farm operations and discourage conversion to other uses.

Develop incentives and requirements for energy efficient building design and site development practices through various approaches, including modifications to building codes and zoning and subdivision ordinances.

Pa`ia-Ha`iku Community Plan

Revise building, subdivision and roadway standards appropriate for rural areas to maintain its character, and reduce cost of developments.

Establish varying minimum lot sizes to reflect different kinds of agricultural and rural activities, and to control the rate and location of Agricultural subdivisions.

Revise subdivision standards for rural areas such as Pa`ia-Ha`iku to maintain a rural character and appearance.

Makawao-Pukalani-Kula Community Plan

Revise the subdivision ordinance to require bona-fide agricultural use for agricultural subdivisions.

Adopt zoning standards which use varying minimum lot sizes or other means to differentiate rural residential and agricultural land uses; and implement a program to rezone existing pseudo-agricultural subdivisions to the two-acre rural district.

Formulate and implement a comprehensive directed and managed growth program, consistent with the adopted Makawao-Pukalani-Kula Community Plan and the Maui County General Plan. This would include methodologies such as rural cluster guidelines, farm trusts, phased development in accordance with available infrastructure, the development of urban growth boundaries, transfer of development rights and open space easements.

Analyze the zoning and subdivision ordinances to identify amendments which will facilitate and support the maintenance and development of diversified agricultural activities.

Adopt zoning standards that establish varying minimum lot sizes to reflect different rural and agricultural land uses.

Develop guidelines for rural cluster development and planned unit development as part of a comprehensive growth management and open space protection program.

Develop and adopt guidelines for rural cluster developments.

Explore modifications to building and subdivision codes and standards such as minimum lot sizes, and compact parking ratios which will reduce the ultimate cost of housing.

Hana Community Plan

Review and modify, as appropriate, the existing Maui County building code and subdivision code, to promote reduction in home construction costs.

Molokai Community Plan

Establish zoning standards with varying minimum lot sizes to prevent improper use and reflect different kinds of agricultural activities within the agricultural district.

Adopt appropriate subdivision and roadway improvement standards to provide affordability and a rural character.

Lana`i Community Plan

Revise building, subdivision and roadway standards appropriate for rural areas to maintain the regional character and reduce costs of development.

ORDINANCE NO. _____
(DRAFT - 01/23/15)

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE, TO
ALLOW FOR THE CREATION OF AGRICULTURAL CLUSTER SUBDIVISIONS

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

SECTION 1. The purpose and intent of this ordinance is to amend the Agricultural Zoning Ordinance to allow for the creation of agricultural cluster subdivisions whereby agricultural land may be subdivided into clusters of smaller lots so the remaining land can be preserved in perpetuity for the protection of agricultural, environmental, cultural and open space resources. The Council's intent is to provide flexibility in site planning and design to: 1) promote land conservation; 2) preserve agricultural land resources; and 3) maintain district character, consistent with the General Plan. This ordinance is not intended to allow for the creation of lots beyond the maximum lot limit under Section 19.30A.030.G, Maui County Code.

SECTION 2. Title 19, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

19.30A.030.H. Agricultural cluster subdivision.
The purpose of an agricultural cluster subdivision is

to allow agricultural land to be subdivided into clusters of smaller lots so the remaining land can be preserved in perpetuity for the protection of agricultural, environmental, cultural and open space resources.

1. An agricultural cluster subdivision shall be exempt from subsections 19.30A.030A, 19.30A.030.B, and 19.30A.030D; the minimum lot size shall be one acre, the minimum lot width shall be 150 feet, and the maximum developable area shall be 4,000 square feet. The maximum developable area restriction shall apply to farm dwellings, but shall not apply to any structure or portion thereof which is used to support agriculture, including but not limited to storage facilities, barns, silos, greenhouses, farm labor dwellings, and stables, and shall not apply to utility facilities as permitted by this chapter.

2. The maximum number of lots that may be created through an agricultural cluster subdivision shall not exceed the maximum number of lots allowed pursuant to the provisions and standards of this section;

3. The proposed subdivision is permissible pursuant to section 19.30A.040.A;

4. The subdivision shall include the creation of an agricultural conservation lot. The minimum area of the agricultural conservation lot shall be at least seventy percent of the subject lot area when the subject lot area is at least ninety-two acres, or sixty percent of the subject lot area when the subject lot area is less than ninety-two acres;

5. An agricultural conservation lot shall be prohibited from changes in zoning, consolidation, or further subdivision unless requested by a governmental agency for a public purpose;

6. The director shall maintain an inventory of all agricultural conservation lots; and,

7. The design of the subdivision shall support the purpose and intent of the agricultural district by clustering the smaller subdivided lots together and by employing

subdivision design to best preserve and utilize the agricultural conservation lot; further design guidelines and practices shall be established by rule, pursuant to MCC Section 19.30A.120.

For the purpose of this Section, an agricultural conservation lot is any lot created as a requirement of an agricultural cluster subdivision and dedicated for agricultural use, in perpetuity, through the execution and recordation with the bureau of conveyances of the State of Hawaii or the land court of the State, of a unilateral agreement incorporating such conditions that shall restrict, unless requested by a governmental agency for a public purpose, the new agricultural conservation lot to the permitted uses set forth in section 19.30A.050 of this chapter and prohibit the new lot from changes in zoning, consolidation, or further subdivision. The unilateral agreement shall provide that the terms and conditions herein shall run with the land in perpetuity and bind and constitute notice to all subsequent grantees, assignees, mortgagees, lienors, and any other person who claims an interest in the property. The unilateral agreement shall be irrevocable and enforceable by the County, by appropriate action at law or suit in equity, against the parties and their heirs, personal representatives, successors, and assigns.

SECTION 3. Severability. If any provision of this ordinance or application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

SECTION 4. New material is underscored. Material to be repealed is bracketed. In printing this bill, the County Clerk

need not include the brackets, bracketed material, or underscoring.

SECTION 5. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui

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JOHN BLUMER-BUELL
Post Office Box 787, Hana, Hawaii 96713
Email blubu@hawaii.rr.com

February 9, 2015
Public Testimony for February 10, 2015

Maui Planning Commission, Ivan Lay, Chair
Sent Via Email to the Maui Planning Department
Attention: S. Bosco and Planning Department
Cc: Council Member Don Guzman

Subject: Resolution No. 14-114 referred by Council Member Don Guzman of the Maui County Council to the Maui, Molokai, and Lana'i Planning Commissions for an AMENDMENT TO CHAPTER 19.30A-Agricultural District of the Maui County Code, to Allow for the Creation of Agricultural Conservation Lots.

Aloha Chair Lay and Members of the Planning Commission,

I request you refer the subject resolution to the Hana Advisory Committee to the Maui Planning Commission for a public hearing in Hana. This will facilitate important community input from Hana and East-Maui residents.

The 1994 Hana Community Plan Ordinance states, "Maintain the Hana Advisory Committee to the Maui Planning Commission to make recommendations regarding **all land use policies**, permits, and changes in designation within the Hana District". Further, the plan states, "Encourage community-based dialogue regarding proposed land use changes in order to avoid unwarranted conflict".

There are thousands of acres of agriculturally zoned land in the Hana Community Plan District. Considering the numerous past and present controversies regarding the subdivision and use of agriculturally zoned lands in the Hana District, this resolution needs to be fully vetted in Hana. This will meet the intent of the Hana Community Plan Ordinance and the Maui Island Plan.

Mahalo,

John Blumer-Buell, Hana