

REQUEST FOR LEGAL SERVICES

Date: June 8, 2021
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Stephanie Chen, Esq.

Subject: ZIPLINE, CANOPY, AND BUNGEE JUMPING TOUR OPERATIONS (PSLU-11)

Background Data: Please see the attached bill. Please provide your response to pslu.committee@mauicounty.us and alison.stewart@mauicounty.us.

Work Requested: FOR APPROVAL AS TO FORM AND LEGALITY

OTHER:

Requestor's signature  Tamara Paltin	Contact Person <u>Alison Stewart</u> (Telephone Extension: <u>7661</u>)
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ROUTINE (WITHIN 15 WORKING DAYS) RUSH (WITHIN 5 WORKING DAYS)
 PRIORITY (WITHIN 10 WORKING DAYS) URGENT (WITHIN 3 WORKING DAYS)

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): June 9, 2021
REASON: For posting on the June 18, 2021 Council agenda.

FOR CORPORATION COUNSEL'S RESPONSE

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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TO REQUESTOR: APPROVED DISAPPROVED OTHER (SEE COMMENTS BELOW)
 RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

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

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

ORDINANCE NO. _____

BILL NO. _____ (2021)

A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING
ORDINANCE RELATING TO ZIPLINE, CANOPY, AND BUNGEE JUMPING TOUR
OPERATIONS

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

SECTION 1. The purpose of this Ordinance is to require a Conditional Permit in accordance with Chapter 19.40, Maui County Code, for zipline, canopy, rappelling, and bungee jumping tour operations in the County Agricultural District to enable the Council to evaluate the appropriateness of these uses in relation to adjacent permitted uses.

SECTION 2. Section 19.04.040, Maui County Code, is amended to add new definitions to be appropriately inserted and read as follows:

“Bungee jumping” means a commercial activity during which a participant jumps from a height, such as from a building, crane, bridge, or cliff, while connected to a large elastic cord.”

“Canopy tour” means a supervised or guided educational or recreational activity or other aerial adventure course that may include beams, bridges, cable traverses, climbing walls, nets, platforms, ropes, swings, seat harnesses, towers, or ziplines that may be installed on or in, or in combination with, trees, poles, portable structures, or buildings, or be part of self-supporting structures.”

“Rappelling” means a controlled descent off a vertical drop, such as a rock face, by using anchors and rope fixed at a higher point.”

“Zipline” means a commercial activity during which a participant traverses from one point to another using a cable or rope line suspended between support structures.”

SECTION 3. Section 19.30A.050, Maui County Code, is amended to read

as follows:

“19.30A.050 Permitted uses. The following uses and structures are permitted in the agricultural district, [provided they also comply] subject to compliance with all other applicable laws:

A. Principal uses.

1. Agriculture.
2. Agricultural land conservation.
3. Agricultural parks, [pursuant to] in accordance with chapter 171, Hawaii Revised Statutes.
4. Animal and livestock raising, including animal feed lots, and sales yards.
5. Private agricultural parks [as defined herein].
6. Minor utility facilities as defined in section 19.04.040 [of this code.].

7. Retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance.

8. Solar energy facilities, as defined in section 19.04.040 [of this code], and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than 35 percent of the lot, and are compatible with existing agricultural uses; except that land with soil classified by the land study bureau's detailed land classification as overall (master) productivity rating class D or E need not be compatible with existing agricultural uses.

B. Accessory uses. Uses that are incidental or subordinate to, or customarily used in conjunction with, a permitted principal use, as follows:

1. Two farm dwellings per lot, one of which [shall] must not exceed one thousand square feet of developable area.

2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot [shall] must meet at least two of the following three criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural products per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by State general excise tax forms and federal form 1040 Schedule F filings.

b. Provide certification by the department of water supply that agricultural water rates are being

paid if the subject lot is served by the County water system.

c. Provide a farm plan that demonstrates the feasibility of commercial agricultural production.

On the islands of Molokai and Lanai, the owner or lessee of the lot [shall] must meet both of the criteria provided by subsections 19.30A.050(B)(2)(a) and 19.30A.050(B)(2)(b).

3. A maximum of two commercial agricultural structures per lot, subject to parking requirements of chapter 19.36B [of this code.].

4. Storage, wholesale and distribution, including barns; greenhouses; storage facilities for agricultural supplies, products and irrigation water; farmer's cooperatives; and similar structures that are customarily associated with one or more of the permitted principal uses or, for the purpose of this section, are associated with agriculture in the County.

5. Processing of agricultural products, the majority of which are grown in the County; this includes the burning of bagasse as part of an agricultural operation.

6. Energy systems, small-scale.

7. Small-scale animal-keeping.

8. Animal hospitals and animal board facilities; if conducted on the island of Molokai, such uses [shall] must have been approved by the Molokai planning commission as conforming to the intent of this chapter.

9. Riding academies; if conducted on the island of Molokai, such uses [shall] must have been approved by the Molokai planning commission as conforming to the intent of this chapter.

10. Open land recreation as follows: hiking; noncommercial camping; fishing; hunting; equestrian activities; rodeo arenas; arboretums; greenways; botanical gardens; guided tours that are accessory to principal uses, such as farm or plantation tours, petting zoos, and garden tours[;], excluding zipline, canopy, and bungee jumping tours; hang gliding; paragliding; mountain biking; and accessory restroom facilities. If hiking, fishing, hunting, equestrian activities, rodeo arenas, hang gliding, paragliding, or mountain biking are conducted for commercial purposes on the island of Molokai, such uses [shall] must have been approved by the Molokai planning commission as conforming to the intent of this chapter. Open land recreation uses or structures not specifically permitted by this subsection, [or by] subsection 19.30A.060(A)(7), or chapter 19.40, [shall be] are prohibited; certain open land recreation uses or structures

may also be required to obtain a special permit [pursuant to] in accordance with chapter 205, Hawaii Revised Statutes.

11. Except on Molokai, bed and breakfast homes permitted under chapter 19.64 [of this code] that are:

a. Operated in conjunction with a bona fide agricultural operation that produced \$35,000 of gross sales of agricultural products for each of the preceding two years, as shown by State general excise tax forms and federal form 1040 Schedule F filings; or

b. In compliance with all of the following criteria, [provided] except that the bed and breakfast home is not subject to a condominium property regime pursuant to chapter 514A or chapter 514B, Hawaii Revised Statutes:

i. The lot was created prior to November 1, 2008.

ii. The lot is comprised of five acres or less.

iii. An approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes; or

c. Located in sites listed on the State of Hawaii [Register] register of [Historic Places] historic places or the [National Register] national register of [Historic Places.] historic places.

12. Short-term rental homes permitted under chapter 19.65 [of this code, provided], except that an approved farm plan has been fully implemented and is consistent with chapter 205, Hawaii Revised Statutes.

13. Parks for public use, not including golf courses, and not including commercial uses, except when under the supervision of a government agency in charge of parks and playgrounds.

14. Family child care homes as defined in section 46-15.35(b), Hawaii Revised Statutes, that are registered [pursuant to] in accordance with chapter 346, Hawaii Revised Statutes, and located in a legally permitted farm dwelling.

15. Other uses that primarily support a permitted principal use; however, [such] the uses [shall] must be approved by the appropriate planning commission as conforming to the intent of this chapter.”

SECTION 4. Section 19.30A.060, Maui County Code, is amended by amending subsection A to read as follows:

“A. The following uses and structures are permitted in the agricultural district if a special use permit, as provided in section 19.510.070 [of this title], is obtained; except that if a use described in this section also requires a special permit as provided in chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the State special permit shall fulfill the requirements of this section:

1. Additional farm dwellings beyond those permitted by subsection 19.30A.050(B)(1).
2. Farm labor dwellings that do not meet the criteria of subsection 19.30A.050(B)(2).
3. Commercial agricultural structures that do not meet the standards and restrictions of this chapter.
4. Public and quasi-public institutions that are necessary for agricultural practices.
5. Major utility facilities as defined in section 19.04.040, [of this title.]
6. Telecommunications and broadcasting antenna.
7. Open land recreation uses, structures, or facilities that do not meet the criteria of subsection 19.30A.050(B)(10), including commercial camping, gun or firing ranges, archery ranges, skeet shooting, paint ball, [bungee jumping,] skateboarding, rollerblading, playing fields, rappelling, except rappelling within 500-feet of a waterfall, and accessory buildings and structures. Certain open land recreation uses or structures may also be required to obtain a special permit as provided in section 205-6, Hawaii Revised Statutes. The following uses or structures are prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, [and] golf driving ranges[.]; and, on Molokai, zipline, canopy, rappelling, and bungee jumping tours.
8. Cemeteries, crematories, and mausoleums.
9. Churches and religious institutions.
10. Mining and resource extraction.
11. Landfills.
12. Solar energy facilities that are greater than fifteen acres.”

SECTION 5. Section 19.40.070, Maui County Code, is amended to read as follows:

“19.40.070 Establishment. A. Upon finding by the appropriate planning commission that reasons justifying granting of a conditional permit exist, and that the proposed use would not be

significantly detrimental to the public interest, convenience, and welfare, and will be in harmony with the area in which it is to be located; issuance of a conditional permit may be recommended, subject to such terms and conditions and for such period of time as the facts may warrant.

B. [Should] If the commission [determine that] determines the permit requested is for a use [which] that is substantially different from those uses permitted in the use zone, the commission [shall] must recommend denial of the request and may instruct the applicant to seek a change of zoning [should] if the facts warrant such an application.

C. Every conditional permit [shall] must be conditioned upon the proposed development fully complying with all requirements of this title and other applicable governmental requirements.

D. Approval of a conditional permit application [shall] must be through enactment of an ordinance by the council, in accordance with the provisions of the charter.

E. A conditional permit is required for the operation of a zipline, canopy, or bungee jumping tour in any district where zipline, canopy, or bungee jumping tours are not permitted uses.

1. Ordinances for conditional permits for zipline, canopy, or bungee jumping tours may be enacted only for parcels on Maui and Lanai of at least fifty acres or multiple contiguous parcels that together are at least fifty acres; except that the council may enact ordinances for conditional permits for zipline, canopy, or bungee jumping tours on parcels or multiple contiguous parcels smaller than fifty acres only by a two-thirds vote of its entire membership on two readings.

2. No more than fifteen conditional permits in aggregate for zipline, canopy, or bungee jumping tours may be in effect at any time on Maui and Lanai.

3. The council may impose conditions setting setback restrictions for zipline, canopy, or bungee jumping tours.

4. Any zipline, canopy, or bungee jumping tour in the state agricultural district must comply with section 205-6, Hawaii Revised Statutes, and obtain a state special permit if required.”

SECTION 6. Section 19.40.080, Maui County Code, is amended by adding a new subsection to read as follows:

“19.40.080 Conditions, amendments, modifications. A. Conditional permits may be issued subject to [such] terms and

conditions [deemed] that are reasonable and necessary to fulfill the intent and purposes of this title. All changes in the use or appearance of land or buildings allowed by the permit [shall] must be in accordance with the specified conditions and the proposal as approved. [Such] The permit [shall be] must state that it is issued subject to compliance with [and/or] and fulfillment of [such] the terms and conditions. [and shall so state.]

[B. Any person who has been issued a conditional permit may request the commission to review a request to amend or delete any terms and conditions imposed upon such permit.]

[C.] B. The commission on request or on its own initiative may recommend action to revoke any conditional permit or recommend action to amend or delete any terms, conditions, and time stipulations of such conditional permit if [such] the action is [deemed] necessary to effectuate the purpose and intent of this chapter. The commission [shall] must provide due notice in writing to the [applicant/permittee] applicant or permittee and an opportunity for a hearing.

[D.] C. The planning director may approve amendments to the conditional permit if the amendments are not substantive and do not result in significant impacts above what would result from the approved conditional permit. Before approving any [such] amendments, the planning director [shall] must notify the respective planning commission of the proposed non-substantive amendments. The commission may review the proposed non-substantive amendments and take action or waive review.

D. Conditional permits may be issued for zipline, canopy, and bungee jumping tours on Maui and Lanai if the following criteria are met:

1. The application must be reviewed by the cultural resource commission.

2. Each permit holder who operates a zipline, canopy, or bungee jumping tour must name the County as an additional insured in a general liability insurance policy of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, which insurance must include a duty to defend, indemnify, and hold harmless the County if the County is sued as a result of the operation of the zipline or canopy tour.

3. A zipline, canopy, or bungee jumping tour may not operate before 8:00 a.m. or after 5:00 p.m.

4. No person may consume any intoxicating substance while at the location of a zipline, canopy, or bungee jumping tour while it is open for business. No person may hold a conditional permit under this chapter and a liquor license at the same time.

5. Each operator of a zipline, canopy, or bungee jumping tour must have the equipment and facility inspected once every two years by an inspector certified by the association for challenge course technology or a State-licensed professional civil engineer.

6. Each operator of a zipline, canopy, or bungee jumping tour must maintain the following records and make them available to the director or the council upon request:

a. Proof of the insurance required by the conditional permit.

b. Inspection reports.

c. Maintenance records.

d. Engineering reports demonstrating safety of the operation and equipment.

e. Signed participant acknowledgments of risks and rules of conduct.”

SECTION 7. 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 8. A zipline or canopy tour in the County Agricultural District that received approval from the County as an accessory use as of the effective date of this Ordinance and that is operated on a parcel or multiple contiguous parcels of at least 50 acres must meet the requirements of Section 19.40.080(E), Maui County Code, within 30 days of the effective date of this Ordinance, but may otherwise continue as a nonconforming use in accordance with Section 19.500.110(C), Maui County Code, without obtaining a Conditional Permit.

A zipline or canopy tour in the County Agricultural District that received approval from the County as an accessory use as of the effective date of this Ordinance and that is operated on a parcel or multiple contiguous parcels smaller than 50 acres must meet the requirements of Section 19.40.080(E), Maui County Code, within 30 days of the effective date of this Ordinance but may

otherwise continue as a nonconforming use in accordance with Section 19.500.110(C), Maui County Code; except that no later than one year from the effective date of this Ordinance, the owner or operator of the zipline or canopy tour must either obtain a Conditional Permit or cease operation of the nonconforming use.

SECTION 9. This Ordinance takes effect upon its approval.

APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

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