

REQUEST FOR LEGAL SERVICES

Date: June 26, 2017
From: Robert Carroll, Chair
Land Use Committee

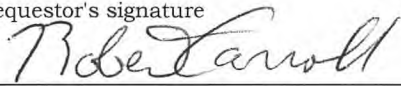
TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, TO AUTHORIZE CERTAIN SUBDIVISIONS AND USES (LU-26)

Background Data: Review and approve revised proposed bill. A mark-up version comparing the bill previously approved by your office against the revised proposed bill is transmitted with this request. An original hard copy of the revised proposed bill is required.

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

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

SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): June 28, 2017
REASON: Posting for Council meeting scheduled for July 7, 2017.

FOR CORPORATION COUNSEL'S RESPONSE

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

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

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

lu:ltr:026acc04:grs

Attachments

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE AMENDING CHAPTERS 19.04 AND 19.30A, MAUI COUNTY CODE, RELATING TO ROADWAY LOTS AND RESTRICTED USE LOTS, AND AUTHORIZING FEES AND ADMINISTRATIVE RULES

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

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

SECTION 2. Chapter 19.04, Maui County Code, is amended by adding a new Section 19.04.025, to read as follows:

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

Roadway lots and restricted use lots are subject to the following:

1. Roadway lots and restricted use lots shall be designated in the notes section of the final subdivision plat with a description of each lot’s intended purpose. Any designation for restricted use lots, except for restricted used lots for roadway purposes, shall be recorded and shall run with the land.

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

3. In the agricultural district, any future consolidation concurrent with a subdivision that includes any

roadway lot or restricted use lot cannot result in any additional lots above the number that would have been allowed at the time the lot was created by the subdivision, in accordance with sections 19.30A.030.G and 19.30A.040 of this title.”

SECTION 3. Section 19.04.040, Maui County Code, is amended by adding a new definition to be appropriately inserted and to read as follows:

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

SECTION 4. Chapter 19.04, Maui County Code, is amended by adding a new Section 19.04.050, to read as follows:

“**19.04.050 Fees.** The department may collect fees as set forth in the annual budget to administer this title, such as fees to review and process ministerial and discretionary permit applications, including applications that are reviewed by the department but administered by another agency, including building permit or subdivision applications. Additional fees, as set forth in the annual budget, may also be collected when the director determines that an application fails to meet submittal requirements as provided by law and, therefore, requires additional submittals and further review.”

SECTION 5. Chapter 19.04, Maui County Code, is amended by adding a new section 19.04.060, to read as follows:

“**19.04.060 Administrative Rules.** The director may adopt administrative rules to implement the provisions of this article.”

SECTION 6. Section 19.04.015, Maui County Code, is amended to read as follows:

“**19.04.015 Purpose and intent.** A. The purpose and intent of this comprehensive zoning article is to regulate the utilization of land in a manner encouraging orderly development in accordance with the land use directives of the Hawaii Revised Statutes, the

revised charter of the County[,] of Maui (1983), as amended, and the general plan and the community plans of the County.

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

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

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

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

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

5. Stabilizing the value of property[;] .

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

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

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

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

SECTION 7. Section 19.04.020, Maui County Code, is amended to read as follows:

“19.04.020 Compliance. A. Buildings and [Subdivisions.] subdivisions. No building or structure shall be erected, structurally

enlarged, or maintained unless it complies with the requirements of the building code of the County. No land shall be subdivided unless the subdivision complies with the provisions of this title.

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

SECTION 8. Section 19.30A.040, Maui County Code, is amended to read as follows:

“19.30A.040 Limitations on resubdivision. A. ~~[Following the effective date of this the ordinance codified in this chapter: 1.]~~ At the time of subdivision, the director of public works ~~[and waste management]~~ shall determine the maximum number of lots that can be created based upon the provisions and standards set forth in section 19.30A.030~~;~~].

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

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

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

~~[B.]~~E. The following subdivisions shall not reduce the gross “area of lot” ~~[nor]~~ or the “maximum number of permitted lots” as provided by subsection 19.030A.030.G:

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

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

3. Any subdivision for purposes of providing an easement exclusively for the protection of sites of cultural and historic significance; greenways; protection of sensitive environmental areas such as wetlands, streams, and

endangered species habitat; and easements for public access to shoreline and mountain areas; or

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

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

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

SECTION 9. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

lu:misc:026abill03:grs

ORDINANCE NO. _____

BILL NO. _____ (2017)

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1. Roadway lots and restricted use lots shall be designated in the notes section of the final subdivision plat with a description of each lot’s intended purpose. ~~and~~ Any designation for restricted use lots, except for restricted used lots for roadway purposes, shall be recorded and shall run with the land.

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

3. In the agricultural district, any future consolidation concurrent with a subdivision that includes any

roadway lot or restricted use lot ~~shall not~~cannot result in any additional lots above the number that would have been allowed at the time the lot was created by the subdivision, in accordance with sections 19.30A.030.G and 19.30A.040 of this title.”

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

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

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

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

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“19.30A.040 Limitations on resubdivision. A. [Following the effective date of this the ordinance codified in this chapter: 1.] At the time of subdivision, the director of public works [and waste management] shall determine the maximum number of lots that can be created based upon the provisions and standards set forth in section 19.30A.030~~;~~].

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

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

SECTION 9. Material to be repealed is bracketed. New material is underscored. In printing this ordinance, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 10. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

lu:misc:~~026a~~bill01a~~026a~~bill03a:grs