

REQUEST FOR LEGAL SERVICES

D a t e: June 1, 2020

F r o m: Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

TRANSMITTAL

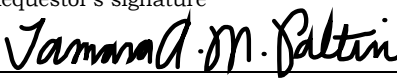
Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: Michael Hopper, Esq.

Subject: ZONING STANDARDS FOR CANOPY TOUR AND ZIPLINE OPERATIONS (PSLU-29)

Background Data: Please review the attached proposed resolution, and if appropriate, approve it as to form and legality. If revisions are required, please email a Word document with track changes.

Work Requested: ☒ [X] FOR APPROVAL AS TO FORM AND LEGALITY

☐ [] OTHER:

Requestor's signature  Tamara Paltin	Contact Person Richard E. Mitchell or Ana Lillis (Telephone: 270-7662 or 270-7660, respectively)
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☐ [] ROUTINE (WITHIN 15 WORKING DAYS)

☐ [] RUSH (WITHIN 5 WORKING DAYS)

☐ [] PRIORITY (WITHIN 10 WORKING DAYS)

☐ [] URGENT (WITHIN 3 WORKING DAYS)

☒ [X] SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES): June 9, 2020

REASON: For posting on the June 19 Council meeting 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)

pslu:ltr:029acc01:alkl

Attachment

Resolution

No. _____

REFERRING TO THE LANAI, MAUI, AND MOLOKAI
PLANNING COMMISSIONS A PROPOSED BILL TO AMEND
THE COMPREHENSIVE ZONING ORDINANCE RELATING TO
CANOPY TOUR AND ZIPLINE OPERATIONS

WHEREAS, the Council is considering a proposed bill to amend Chapter 19.30A, Maui County Code, to require a Conditional Permit for canopy tour and zipline operations; 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, and provide findings and recommendations to the Council; now, therefore,

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

1. That it refers the proposed bill, entitled "A BILL FOR AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE RELATING TO CANOPY TOUR AND ZIPLINE OPERATIONS," a copy of which is attached as Exhibit "1," to the Lanai, Maui, and Molokai planning commissions for appropriate action, in accordance with Sections 8-8.4 and 8-8.6 of the Revised Charter of the County of Maui (1983), as amended;
2. That it respectfully requests 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

pslu:misc:029areso03

EXHIBIT "1"

ORDINANCE NO. _____

BILL NO. _____ (2020)

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

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

SECTION 1. Purpose. The purpose of this ordinance is to require a Conditional Permit for canopy tour and zipline operations to enable the Council to evaluate the appropriateness of the uses in various zoning districts.

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

"Chapter 19.97

ZIPLINES AND CANOPY TOURS

Sections:

19.97.010	Purpose.
19.97.020	Definitions
19.97.030	Districts in which permitted.
19.97.040	Restrictions and standards.
19.97.050	Administrative rules.
19.97.060	Council review.

19.97.010 Purpose. The purpose of this chapter is to establish procedures for the regulation of ziplines and canopy tours.

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

"Canopy tour" means a supervised or guided educational or recreational activity or other aerial adventure course that includes beams, bridges, cable traverses, climbing walls, nets, platforms,

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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.

"Zipline" means a commercial activity in which a participant traverses from one point to another by use of a cable or rope line suspended between support structures.

19.97.030 Districts in which permitted. A. Ziplines and canopy tours are permitted in accordance with the provisions established in each zoning district and as provided in this chapter.

B. A conditional permit is required for the operation of a zipline or canopy tour in any district where ziplines and canopy tours are not permitted uses.

C. Ordinances for conditional permits for ziplines or canopy tours may be enacted only for parcels 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 ziplines or canopy tours on parcels or multiple contiguous parcels smaller than fifty acres only by a two-thirds vote of its entire membership on two readings.

D. No more than fifteen conditional permits for ziplines and canopy tours may be in effect at any time.

E. Any zipline or canopy tour in the State agricultural district must obtain a State special permit as provided in section 205-6, Hawaii Revised Statutes.

19.97.040 Restrictions and standards. A. Each operator of a zipline or canopy tour permit 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 the result of the operation of the zipline or canopy tour.

B. A zipline or canopy tour may not operate before 8:00 a.m. or after 5:00 p.m.

C. No person may consume any intoxicating substance while at the location of a zipline or canopy 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.

D. Each operator of a zipline or canopy must maintain the following records and make them available to the director or the council upon request:

1. Proof of the insurance required by the conditional permit.
2. Inspection reports.
3. Maintenance records.

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4. Signed participant acknowledgments of risks and rules of conduct.

19.97.050 Administrative rules. The director may adopt administrative rules to implement the provisions of this chapter.

19.97.060 Council review. The council or one of its standing committees must review this chapter within two years of its enactment or at least every two years thereafter.”

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 with all other applicable laws:

A. Principal uses.

1. Agriculture.
2. Agricultural land conservation.
3. Agricultural parks, pursuant to 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 not exceed one thousand square feet of developable area.

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2. One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall 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 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 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 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 ziplines and canopy tours; hang gliding; paragliding; mountain biking; and accessory restroom

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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 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 prohibited; certain open land recreation uses or structures may also be required to obtain a special permit pursuant to 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 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 of Historic Places or the National Register of Historic Places.

12. Short-term rental homes permitted under chapter 19.65, [of this code,] provided 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 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 uses shall be approved by the

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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, 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, ziplines. and canopy 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.”

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SECTION 5. 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 6. 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 Code Section 19.97.040 within 30 days of the effective date of this ordinance, but may otherwise continue as a nonconforming use in accordance with Code Section 19.500.110(C) 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 Code Section 19.97.040 within 30 days of the effective date of this ordinance but may otherwise continue as a nonconforming use in accordance with Code Section 19.500.110(C); 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. The Conditional Permit need not comply with the application requirements of the following subsections of Code Section 19.510.010(D): 9-17, 20, 21(c), 21(d), 21(e), 21(g), 23, and 24.

SECTION 7. This ordinance takes effect upon its approval.

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APPROVED AS TO FORM AND LEGALITY

Department of the Corporation Counsel
County of Maui

pslu:misc:029abil03