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OFFICE OF THE
COUNTY COUNCIL

MEMO TO: Don S. Guzman, Chair, Economic Development, Energy, Agriculture, and Recreation Committee

F R O M: Sharon Brooks, Legislative Attorney 

SUBJECT: **MAUI ISLAND PLAN, CHAPTER 4, ECONOMIC DEVELOPMENT RELATING TO TOURISM** (EAR-41)

On February 5, 2016, the Council approved Resolution 16-9, referring to the Lanai, Maui, and Molokai Planning Commissions the attached proposed bill to regulate agricultural tourism activities in the Agricultural District. The purpose of the bill is to implement Sections 205-2(d)(11) and 205-2(d)(12), Hawaii Revised Statutes ("HRS") in Maui County.

You have asked for an analysis of comments and concerns raised by the Lanai, Maui, and Molokai Planning Commissions relating to the proposed bill. This memorandum summarizes the comments included in correspondence dated August 25, 2016, from the Planning Director to Maui County Council Chair Mike White, on file in the Economic Development, Energy, Agriculture, and Recreation Committee, incorporating the following documents:

1. Memo Report, dated April 4, 2016, from the Planning Director to the Maui, Molokai, and Lanai Planning Commissions;
2. Correspondence dated April 7, 2016, from the Director, Office of Planning, State of Hawaii, to the Planning Director;
3. Minutes of the Molokai Planning Commission meeting on April 14, 2016;
4. Minutes of the Lanai Planning Commission meeting on May 18, 2016; and
5. Correspondence dated March 24, 2016, from the Chief Executive Officer, Office of Hawaiian Affairs, State of Hawaii, to the Planning Director.

This memorandum also provides, for your consideration, suggested revisions to address the stated concerns.

I. Memo Report, dated April 4, 2016, from the Planning Director to the Planning Commissions

1. Comment: The bill is not consistent with Sections 205-2(11), 205-2(12), and 165-2, Hawaii Revised Statutes.

Discussion:

The apparent inconsistency arises from the fact that State law does not define the terms “agricultural tourism” and “agricultural tourism activities.” Instead, Sections 205-2(11) and 205-2(12), HRS, contain conditions for those terms, including a reference to a “farming operation,” defined in Section 165-2, HRS.

The proposed bill defines “agricultural tourism” and “agricultural tourism activities,” incorporating the required components of Sections 205-2(11), 205-2(12), and 165-2. Additionally, instead of referencing a separate definition for a “farming operation,” the bill uses the definition of an “active agricultural operation” – a term that contains the virtually the same language as Section 165-2 and already exists in the Agricultural District definitions in Section 19.30A.015, Maui County Code.

Moreover, the language of the bill is consistent with, but not identical to, the statutes. This is unavoidable because, in order to regulate agricultural tourism and activities, it is necessary to define “agricultural tourism” and “agricultural tourism activities” even though the definitions do not exist at the State level. The incorporation of the “farming operation” definition into the current “active agriculture operation” definition is for streamlining and consistency purposes.

Possible Revision:

To make the bill’s definition of “agricultural tourism” include all components of Section 205-2(11), the bill’s definition of those terms could be revised to add “working farm or” before “an active agriculture operation.”

To make the bill’s definition of “active agricultural operation” identical to that of the statutory definition of “farming operation,” one would revise the bill’s definition to add the words “conducted in whole or in part” and to delete the words “or subsistence” and “activity.”

References:

HRS provisions:

Section 205-2(11) refers to agricultural tourism conducted on a “working farm, or a farming operation as defined in section 165-2, for the enjoyment,

education, or involvement of visitors provided that the agricultural tourism activity is accessory and secondary to the principal agricultural use and does not interfere with surrounding farm operations...”

Section 205-2(12) requires agricultural tourism activities to coexist with a “bona fide agricultural activity” defined as a farming operation in Section 165-2.

Section 165-2 defines “farming operation” as “a commercial agricultural, silvicultural, or aquacultural facility or pursuit conducted, in whole or in part, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment.”

Bill provisions:

The bill defines “agricultural tourism” as a “commercial activity conducted on the site of an active agriculture operation for the enjoyment, education, or involvement of visitors.”

The bill defines “agricultural tourism activity” as “agricultural tourism that promotes, and does not interfere with, surrounding agriculture operations. Agricultural tourism activities include a ranch or farm stay involving overnight accommodations of twenty-one days or less for any one stay within the county; horseback riding; hunting; fishing; vineyards; distilleries; U-Pick farms or gardens; farm or ranch tours; arboreta and botanical gardens; hiking; mountain biking; fitness or health activities; petting zoos; animal rescue facilities; labyrinths or mazes; la’au lapa’au or heritage activities; lei making, flower arranging, basketry, or other agriculture-related education or craft classes; agriculture industry education; archery; adventure and challenge courses; and cultural or living history activities.”

The bill defines “active agriculture operation” as “a commercial or subsistence agricultural, silvicultural, or aquacultural facility, activity, or pursuit, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment.”

2. Comment: Section 19.30A.077(C)(8)(b) of the bill does not provide criteria for the imposition of improvements necessary to support the agricultural tourism activity use.

This section requires on an agricultural tourism activity registration form to include: “a description of public access to the location of the agricultural tourism activity, including an indication of whether the access will be by a public road or a private easement and, as applicable: ...b. If the agricultural tourism activity will be accessed by a private easement, the planning director shall have the discretion to require additional information documenting the easement and improvements as necessary to support the agricultural tourism activity use.”

Discussion:

Section 19.30A.077(C)(8)(b) authorizes the Planning Director, at the Director’s discretion, to require additional information and improvements to support the agricultural tourism use. This gives the director latitude to determine whether the proposed use complies with the law, and if not, the ability to require additional information or improvements to ensure compliance.

Possible revision:

To address this comment, the bill can be revised to add criteria governing the director’s discretion, e.g., In exercising discretion under this section, the director shall consider [additional criteria].

3. Comment: Section 19.30A.077(D) of the bill does not provide a purpose for the report by the director to the planning commissions.

Section 19.30A.077(D) requires the Planning Director maintain a list of all registered agricultural tourism activities and, annually, to notify the appropriate planning commissions of those activities. The section also states:

“The report shall be acknowledged by the planning commissions and include the name of the producer, the location and type of agricultural tourism activity, verification that the operation is in compliance with the requirements of this chapter, and a summary of complaints and their disposition received relating to the operation of agricultural tourism activities, if any.”

A purpose statement for a report is not typically included in the code. Here, the purpose of the provision appears to be to provide the planning commissions with updates on the registered agricultural tourism activities within each commission's area and confirmation of compliance.

Possible revision:

The bill could be revised by adding a purpose statement to this section, e.g., "To keep the planning commissions apprised on the status of registered agricultural tourism activities, on an annual basis, the Planning Director shall notify...."

4. Comment: Section 19.30A.077(E) of the bill is inappropriate and confusing.

This section states:

"Parking. An agricultural tourism activity shall provide parking as required by section 19.36A.010 of this title. In addition to any other penalties or remedies under this code, a violation of the provisions of section 19.36A.010 related to the agricultural tourism activity, on three separate occasions within a one year period, shall result in a suspension of the agricultural tourism activity until a special use permit is obtained pursuant to section 19.30A.060."

Section 19.36A.010 sets out the number of designated parking spaces required for an agricultural tourism activity as follows:

"One parking space for each 10,000 square feet of gross floor area used principally for the agricultural tourism activity, but not fewer than three spaces dedicated for agricultural tourism use in addition to any other parking required for the property under this chapter. Separate bus parking may be required at the discretion of the planning director pursuant to an approved farm plan."

Section 19.30A.077(E) requires parking pursuant to the general parking table in the chapter for all types of land uses. It also adds suspension of the activity for three separate violations in one year until a special use permit is obtained under 19.510.070 (special use permits) or Chapter 205, HRS (state special use permits).

The intent of this provision appears to be to suspend operation for an agricultural tourism activity that does not comply with the parking requirements, allowing renewed activity only upon meeting special use requirements.

Possible revision:

To address this comment, the enhanced penalty of the suspension could be deleted.

5. Other Department of Planning concerns.

- a. “[P]uts the Department in the awkward position of having to confirm the accuracy of the information”

This is an objection to enforcement responsibilities.

- b. “[T]he bill would create confusion...as Department would require a State Special Permit to conduct much of the activities...”

Agricultural tourism activities, defined by Section 19.30A.015 of the bill and meeting the requirements of Section 19.30A.077, are accessory uses under Section 19.30A.050. The only references in the bill to a requirement for a State Special Permit are for:

- (1) Agricultural tourism activities that have been suspended due to violations of the parking provision three times in one year; and
- (2) Home businesses allowed in an agricultural district as a special use if a permit is obtained, the home business have a State special permit, and the home business also complies with chapter 19.67 (including having a county special permit).

Possible revision:

As stated above, the renewal of a suspended agricultural tourism activity could be deleted. Also, home businesses could be removed from the bill.

- c. An agricultural tourism activity needs to be accessory and secondary to principal agricultural use.

Possible revision:

This is already included in the bill, but the definition of “agricultural tourism” could be amended to include “accessory and secondary to a principal agricultural use.”

- d. An agricultural tourism activity needs to be accessory to a commercial farming operation.

Possible revision:

This is already included in the bill, but the definition of “agricultural tourism activity” could be amended to include the phrase, “accessory to an active agriculture operation.”

II. 4/7/16 Letter from the State Office of Planning to the Planning Director (Attached to 4/4/16 Letter from Planning Director to Planning Commissions)

1. Comment: Definition of “agricultural tourism” needs to be explicit that it is accessory to agricultural operation to address the concern of potential encroachment by commercial non-agricultural uses.

Agricultural tourism is defined as “a commercial activity conducted on the site of an active agriculture operation for the enjoyment, education, or involvement of visitors” under Section 19.30A.015 of the bill. Further, it is allowed as an accessory use to a permitted use in the agricultural district under 19.30A.050 of the bill. The permitted uses listed in that section are: agriculture; agricultural land conservation; agricultural parks, pursuant to chapter 171, HRS; animal and livestock raising, including animal feed lots and sales yards; private agricultural parks; minor utility facilities as defined in section 19.04.040 of this title; retention, restoration, rehabilitation, or improvement of buildings, sites, or cultural landscapes of historical or archaeological significance; and solar energy facilities.

Possible revision:

The definition of agricultural tourism could be amended to specify it is “commercial activity that is accessory to the agriculture operation.”

2. Comment: Definition of “agricultural tourism” should change “vineyards and distilleries” to “wine tasting, wine tours,” as more appropriate to the definition.

Per the State Office of Planning, “vineyards and distilleries” do not have a tourism component.

Possible revision:

The definition of “agricultural tourism” could be amended to change “vineyards and distilleries” to “wine-tasting and wine tours.”

3. Recommendations about agricultural tourism requirements.
 - a. Add proof of agricultural income similar to that for bed and breakfast homes (19.30A.050(B)(12)(a)) and additional farm labor dwellings (19.30A.050(B)(2)). The latter section currently reads:

“One farm labor dwelling per five acres of lot area. On the island of Maui, the owner or lessee of the lot shall meet two of the following three criteria:

a. Provide proof of at least \$35,000 of gross sales of agricultural products(s) per year, for the preceding two consecutive years, for each farm labor dwelling on the lot, as shown by the 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).”

- b. Add language: “Evidence of operation in conjunction with a bona fide agricultural activity 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” (at page 3, item 10 – part of requirement of evidence of farm plan approval by Department of Planning). This would remove agricultural tourism activities as accessory uses to smaller growers.
- c. Add stronger requirements of farm plans application in order to permit higher-value non-agricultural activity, such as additional documents that evidence bona fide agricultural activity as a significant source of occupational income, such as farm business plans, agricultural tax dedications, payment of county agricultural water rates, and soil and water conservation district conservation plans.
- d. Add signature of designated agent to requirements to 19.30A.077(C)(12) and (13) to ensure the agent is put on notice and is accountable for their duty to comply with law.
- e. Add mechanism for monitoring and enforcement of registration requirements in 19.30A.077(D) to ensure that an agricultural operation is on the property per the ordinance.
- f. Add requirement for overnight stays in additional requirements for agricultural tourism activities at 19.30A.077(F), as follows: “1. Overnight stays. Overnight stays shall be limited to farm and/or farm labor dwellings as permitted and approved by the County....”
- g. Remove “subsistence” from the definition of “active agriculture operation” to be consistent with statutes. Adding the word “subsistence” goes beyond the statutory threshold which is for a “farming operation.” Chapter 205 was intended to benefit farmers for whom farming is their livelihood and whose agricultural activities are integral to maintain Hawaii’s agricultural industry or economy.

- h. Remove “agricultural land conservation” from permitted uses in the agricultural district because it allows an applicant to submit a landscaping plan rather than a farm plan.

This is in current law. The State Office of Planning is asking to change current law to close a perceived loophole by deleting “agricultural land conservation” from permitted uses.

Possible revision:

Can revise to delete “agricultural land conservation” from permitted, principal uses under Section 19.30A.050(A).

III. 4/14/16 Minutes of the Molokai Planning Commission meeting

Comments from a Planning Official:

1. The definition of “agricultural tourism” does not meet state law because it does not require a “bona fide farm” or “farming operation.” Concern – does not require commercial agriculture.
2. The Planning Director does not have expertise to determine what additional improvements would need to be made to support agricultural tourism activity use, as required under 19.30A.077.
3. The Department of Planning needs to review the registration application to check for the accuracy of the operation.
4. The Department is not sure of the purpose of having the Planning Director report annually to the Planning Commissions regarding registered agricultural tourism activities.
5. The Department does not know why there is an enforcement provision in the parking section.
6. Look at recommendations of State Office of Planning.

Comments from Commission Members:

1. The primary reason for money-making income on agricultural land should be agricultural, not accessory uses.
2. Take out “subsistence” from definition of “agricultural tourism.”
3. The uses should be consistent with the “integrity of our cultural practices.”
4. Make the bill consistent with State law.
5. Look at State Office of Hawaiian Affairs comments.

IV. 4/14/16 Minutes of the Lanai Planning Commission meeting

Comments from Planning Official:

Same as for Molokai – see above. The Planning Official indicates concerns about “a move towards...liberalizing the agricultural district...[f]rom a land use planner side...”

Comments from Commission Members:

1. By requiring registration rather than a permit, there are issues of who is actually tasked with monitoring agricultural tourism operations.

The Planning Official responds that the Department of Planning would monitor agricultural tourism operations on a complaint basis but enforcement would be hard for them because, for example, “all I gotta do is register my bar because I’m selling beer, but I have a lime and I have a really nice garden and a farm plan that’s been approved. Therefore, my bar should be okay because that’s an ag tourism operation.”

2. Is the accessory use defined?

The Planning Official responds that “in the agricultural district there is accessory uses that’s allowed. But there’s also like based on the scale, like – you have to look what the scale of the operation is relative to what’s going on... [talks

about experience with Maui Land and Pine]...So – and as , you know, as we develop more urbanized and transportation because easier you saw a lot of those small towns disappear and now are under, actually, sugarcane is on them or will, was...for a little longer there will still be sugarcane on them.”

3. There is ambiguity in the definition of agricultural tourism activities which could result in future litigation. The language needs to be more specific about which activities will be allowed, i.e., a restaurant or another lavender farm should not be allowed.
4. There should be a minimum income requirement.

V. 3/24/16 Letter from Office of Hawaiian Affairs to Planning Director (Attached to 4/4/16 Letter from Planning Director to Planning Commissions)

1. The bill lacks enforceable standards to ensure the activities are consistent with Chapter 205, HRS.
2. The bill should not allow non-agricultural uses, such as overnight accommodations, because this would exacerbate the lack of affordable housing by contributing to the rental housing shortage and to rising property values. Concerned that short-term vacation rentals remove much-needed units from the residential rental market, contributing to increase property and housing costs. Concerns that this negatively affects native Hawaiians.
3. The bill should include “strong and practical enforcement provisions.”
4. The definition of “agricultural tourism” should be revised to include “accessory and secondary to the principal agricultural use” and “coexist with a bona fide agricultural activity.”
5. Add income requirements for the principal agricultural use.
6. The bill is unclear about how farm operators can determine to what extent they can pursue agricultural tourism.

Don S. Guzman
October 10, 2016
Page 13

7. The bill should include minimum gross sales of agricultural products or profit minimums for the principal agriculture use, e.g. at least 51 percent of the revenue generated by the working farm.
8. The bill raises concerns that it would significantly expand the types of use permitted within the agricultural district, reducing agriculture production and activity, increase property taxes, and make it harder for bona fide farmers to continue farming.

I hope this analysis useful. Please let me know if you have any questions or need anything else with respect to the Planning Commissions' comments.

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Attachment

ORDINANCE NO. _____

BILL NO. _____ (2015)

A BILL FOR AN ORDINANCE AMENDING TITLE 19, MAUI COUNTY CODE,
TO REGULATE AGRICULTURAL TOURISM ACTIVITIES IN THE
AGRICULTURAL DISTRICT

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

SECTION 1. Purpose. The purpose of this ordinance is to implement Sections 205-2(d)(11) and (12), Hawaii Revised Statutes, to regulate agricultural tourism activities as accessory uses to an active agriculture operation within the County agricultural district, subject to appropriate restrictions and standards.

SECTION 2. Section 19.30A.015, Maui County Code, is amended by adding new definitions to be appropriately inserted and to read as follows:

“Agricultural tourism” means a commercial activity conducted on the site of an active agriculture operation for the enjoyment, education, or involvement of visitors.

“Agricultural tourism activity” means agricultural tourism that promotes, and does not interfere with, surrounding agriculture operations. Agricultural tourism activities include a ranch or farm stay involving overnight accommodations of twenty-one days or less for any one stay within the county; horseback riding; hunting; fishing; vineyards; distilleries; U-Pick farms or gardens; farm or ranch tours; arboretums and botanical gardens; hiking; mountain biking; fitness or health activities; petting zoos; animal rescue facilities; labyrinths or mazes; la’au lapa’au or heritage activities; lei making, flower arranging, basketry, or other agriculture-related education or craft classes; agriculture industry education; archery; adventure and challenge courses; and cultural or living history activities.”

SECTION 3. Chapter 19.30A, Maui County Code, is amended to add a new section to be appropriately designated and to read as follows:

“19.30A.077 Agricultural Tourism Activities. A.
Ownership. An agricultural tourism activity within the agricultural district must be owned and operated by a producer or the producer’s designated agent.

B. Registration. The producer or producer’s agent must register the agricultural tourism activity with the planning department prior to the beginning of the activity’s operation. A registration is non-transferable and shall expire three years from the date of issuance. After an agricultural tourism activity is registered for a particular tax map key number, all subsequent agricultural tourism activities on that tax map key number shall require a separate registration.

C. Form. An agricultural tourism activity registration form shall include the following information:

1. The name, address, email, and telephone number of the producer and the producer's designated agent, if any;

2. Document verifying the producer is the owner, lessee, or licensee of the lot on which the agricultural tourism activity will be located;

3. The name, physical address, mailing address, email, and telephone number of the active agriculture operation associated with the agricultural tourism activity;

4. Copies of the general excise tax license and transient accommodations tax license, if applicable, for the agricultural tourism activity;

5. A description of the agricultural tourism activity;

6. A description of any services, activities, or amenities provided at the location of the agricultural tourism activity that are not agricultural tourism activities;

7. A map containing the tax map key number and a clear depiction of the real property where each agricultural tourism activity is located;

8. A description of public access to the location of the agricultural tourism activity, including an indication of whether the access will be by a public road or a private easement and, as applicable:

a. If the agricultural tourism activity will be accessed by a private easement, the map required by this section shall also contain the following information:

i. The access road for the agricultural tourism activity;

ii. The access road surface material;
and

iii. Houses and their proximity to the access road;

b. If the agricultural tourism activity will be accessed by a private easement, the planning director shall have the discretion to require additional information documenting the easement and improvements as necessary to support the agricultural tourism activity use;

9. Evidence of farm plan approval by the planning department;

10. A copy of a processed zoning and flood confirmation form;

11. Proof of commercial general liability insurance in the amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and automobile liability insurance with a combined single limit of not less than \$1,000,000, listing the County of Maui, its departments, agencies, officers, directors, employees and agents as additional insureds; and Workers Compensation insurance as required by law, that covers the agricultural tourism activity. The producer shall provide a certificate of insurance within 30 days of registration approval, and must notify the planning department of any cancellation or material change of the insurance, such as a reduction in coverage, within 30 days of the date of such cancellation or material change. The planning director may require additional insurance coverage as may be reasonably necessary considering the risk of the particular agricultural tourism activity;

12. The signature of the producer, certifying acknowledgment of and intent to comply with the requirements of this chapter and all other applicable laws and regulations, including those of the state department of health and the department of public works;

13. A copy of all applicable regulatory licenses, permits, and certifications required by county, state, and federal regulations;

14. A statement of the days and hours of operation of the agricultural tourism activity;

15. An acknowledgment signed by the producer that the agricultural tourism activity use shall automatically terminate upon the cessation of the principal active agriculture operation; and

16. Any additional information required by the planning director in the applicable rules.

D. Enforcement; Report. Failure of a producer to register an agricultural tourism activity as required by this chapter may be enforced pursuant to chapter 19.530 of this title. The planning

department shall maintain a list of all agricultural tourism activities registered pursuant to this chapter. On an annual basis, the planning director shall notify the appropriate planning commissions of the agricultural tourism activities registered with the planning department pursuant to this chapter. The report shall be acknowledged by the planning commissions and include the name of the producer, the location and type of agricultural tourism activity, verification that the operation is in compliance with the requirements of this chapter, and a summary of complaints and their disposition received relating to the operation of agricultural tourism activities, if any.

E. Parking. An agricultural tourism activity shall provide parking as required by section 19.36A.010 of this title. In addition to any other penalties or remedies under this code, a violation of the provisions of section 19.36A.010 related to the agricultural tourism activity, on three separate occasions within a one year period, shall result in a suspension of the agricultural tourism activity until a special use permit is obtained pursuant to section 19.30A.060.

F. Additional requirements. Certain agricultural tourism activities shall be subject to additional requirements as follows:

1. Overnight stays. For ranch or farm stays involving overnight accommodations of twenty-one days or less for any one stay within the County, the producer must submit a short-term rental home permit approved pursuant to the provisions of chapter 19.65 of this code. In the event that the planning director determines the short-term rental home does not coexist with an active agriculture operation, the producer shall obtain a State special permit as required by section 19.30A.060(13) of this chapter.

2. Hunting. All persons hunting on private land as a part of agricultural tourism activity must possess a valid hunting license.

3. Accessory facilities. A commercial agricultural structure that is part of an agricultural tourism activity shall meet the requirements of section 19.30A.072 of this chapter.”

SECTION 4. Section 19.30A.015, Maui County Code, is amended by amending the definition of “Active agriculture operation” to read as follows:

““Active agriculture operation” means a commercial or subsistence agricultural, silvicultural, or aquacultural facility, activity, or pursuit, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the

planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment.”

SECTION 5. Section 19.30A.050, Maui County Code, is amended to read as follows:

“19.30A.050 Permitted uses. The following uses and structures shall be 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 title.
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 title, and subject to the restrictions of chapter 205, Hawaii Revised Statutes, that are less than fifteen acres, occupy no more than thirty-five 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.
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 two of the following three criteria:
 - a. Provide proof of at least \$35,000 of gross sales of agricultural product(s) 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 section 19.36A.010.

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; 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 have been approved by the Molokai planning commission as conforming to the intent of this chapter. All other open [Open] land recreation uses or structures [not specifically] are prohibited unless they are permitted by [this] subsection [or by subsection] 19.30A.050(B)(14), [19.30A.060(H)] 19.30A.060(A)(7), or

19.30A.060(A)(14). [shall be prohibited; certain] Certain open land recreation uses or structures may also be required to obtain a State special permit [pursuant to] as provided in chapter 205, Hawaii Revised Statutes.

11. Except on Molokai, bed and breakfast homes permitted under chapter 19.64 of this title 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, 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 Historic Register or the National Register of Historic Places.

12. 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.

13. 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.

14. Agricultural tourism activities, subject to the applicable restrictions in section 19.30A.077.

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

SECTION 6. Section 19.30A.060, Maui County Code, is amended to read as follows:

“19.30A.060 Special uses. A. Permit required. The following uses and structures shall be permitted in the agricultural district if a special use permit, [pursuant to] as provided in section

19.510.070 of this title has been obtained; except that if a use described in this section also requires a State special permit [pursuant to] as provided in chapter 205, Hawaii Revised Statutes, and if the land area of the subject parcel is fifteen acres or less, the [state] 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 [which] that do not meet the criteria of subsection [19.30A.050(B)(11)] 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 State special permit [pursuant to] as provided in chapter 205, Hawaii Revised Statutes. The following uses or structures shall be prohibited: airports, heliports, drive-in theaters, country clubs, drag strips, motor sports facilities, golf courses, and golf driving ranges.

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.

13. Short-term rental homes, subject to the provisions of chapter 19.65 of this title, that do not qualify as accessory uses under section 19.30A.050(B)(14); provided that[,] the applicant need not obtain a County special use permit [pursuant to] as provided in section 19.510.070 of this title; and provided further that, if the property containing the short-term rental home is located in the State agricultural district, the applicant shall obtain a State special [use] permit, [pursuant to] as provided in section 205-6, Hawaii Revised Statutes, in addition to the short-term rental home permit required by chapter 19.65 of this title.

14. Agricultural tourism activities that do not meet the standards or restrictions of section 19.30A.050(B)(14).

B. State permit required. Home businesses shall be permitted in the agricultural district if a State special permit as provided in chapter 205, Hawaii Revised Statutes, is obtained; provided that, the home business shall comply with the provisions of chapter 19.67 of this title, and shall also obtain a County special use permit, if required by chapter 19.67 of this title.”

SECTION 7. Section 19.36A.010, Maui County Code, is amended to read as follows:

“19.36A.010 Designated number of spaces. Unless otherwise provided in this chapter, the following minimum numbers of accessible off-street facilities for the parking of self-propelled motor vehicles shall be provided on private property in connection with the use of any land, or the erection or remodeling of any building or structure. The number of off-street parking spaces required shall not be less than the sum total of spaces of the number of required parking spaces for each component use of land, building, or structure hereinafter specified:

| USE | MINIMUM PARKING RATIO |
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| Accessory dwelling | One parking space for each dwelling unit. |
| <u>Agricultural tourism activities as defined in section 19.30A.077 of this title</u> | <u>One parking space for each 10,000 square feet of gross floor area used principally for the agricultural tourism activity, but not fewer than three spaces dedicated for agricultural tourism use in addition to any other parking required for the property under this chapter. Separate bus parking may be required at the discretion of the planning director pursuant to an approved farm plan.</u> |

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| Apartment house, apartment, apartment-motel with kitchen facility in room | Two parking spaces for each unit; provided that, two parking spaces assigned to a dwelling unit, or allocated for employee parking, may be situated in tandem thereby allowing two vehicles to park end to end. |
| Auditorium, theater, stadium, bleachers | One parking space for every six seats. |
| Banks and medical and dental clinics | One parking space for every [three hundred] <u>300</u> square feet of building; provided that, the minimum shall be three parking spaces. |
| Bed and breakfast home | One parking space for each bedroom used for bed and breakfast home use, in addition to any other parking space(s) required by this section for dwellings not used for short-term rental. Stalls may be situated in tandem. |
| Bowling alley | Five parking spaces for each alley. |
| Business building | One parking space for every [five hundred] <u>500</u> square feet of floor area of building; provided that, the minimum shall be three parking spaces. |
| Church, place of worship | One parking space for every [one hundred] <u>100</u> square feet of floor area of building. |
| Clubhouse, private club | One parking space for every [two hundred] <u>200</u> square feet of floor area of building. |
| Commercial agricultural structures as defined in section 19.30A.072 of this title | One parking space for every [two hundred] <u>200</u> square feet of floor area of building or, for farmer's markets, one parking space for every [two hundred] <u>200</u> square feet of retail floor space; provided that, the minimum shall be two parking spaces; further provided that, for agricultural food establishments, the parking requirements for restaurant, bar, |

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| | nightclub, and amusement facilities shall apply. |
| Convertible apartment, hotel and apartment/hotel units, i.e., single units capable of being utilized as two or more units | An additional one parking space for every three convertible units shall be provided. |
| Day care facility | One parking space for each classroom. |
| Domestic type business in home | One parking space for each business. |
| Golf course | Three parking spaces for each hole in the course. |
| Golf driving range | Four parking spaces for each acre. |
| Hospitals | One parking space for every three beds. |
| Hotel | One parking space for every two guest rooms. |
| Industrial or storage uses in M-1 and M-2 industrial zones | One parking space for every [six hundred] <u>600</u> square feet of floor area of building or [twenty-five] <u>25</u> percent of the lot area, whichever is the greater. |
| Library, museum, art gallery | One parking space for every [three hundred] <u>300</u> square feet of floor area of building. |
| Live/work mixed use | One parking space for every [seven hundred fifty] <u>750</u> square feet of area used for live/work business; commercial uses and residential uses with a live/work configuration may share parking spaces. The spaces required for the residential unit on a live/work building lot may be applied toward the number of spaces required for a business use. |
| Lodging house | One parking space for every two lodging rooms. |
| Mortuary | One parking space for every [forty] <u>40</u> square feet of floor area of building. |
| Motel | One and one-half parking spaces for each unit. |
| Public utility substation | One parking space. |

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| Restaurant, bar, nightclub, amusement centers | One parking space for every [one hundred] <u>100</u> square feet of serving and dining areas; provided that, there shall be a minimum of three parking spaces for patrons and a minimum of three additional spaces for employee parking for each such establishment. |
| Sanitarium, welfare institution, nursing home | One parking space for every eight beds. |
| SBR mixed-use establishment | Two parking spaces per dwelling unit plus one space for every [three hundred] <u>300</u> square feet of non-residential gross floor area. |
| SBR service establishment | One parking space for every [three hundred] <u>300</u> square feet of gross floor area. |
| School with students under fifteen years of age and with students fifteen years of age or older | Eight parking spaces for each classroom. |
| School with students under fifteen years of age | One parking space for each classroom. |
| School with students under fifteen years of age or older | Eight parking spaces for each classroom. |
| Self-storage | One parking space for every [three thousand] <u>3,000</u> square feet of storage. |
| Service station, repair shop, garage | One parking space for every [two hundred] <u>200</u> square feet of floor area of building or [forty] <u>40</u> percent of the lot area, whichever is the greater. The storing and keeping of damaged vehicles or parts thereof shall be within an enclosure bounded completely by a wall six feet in height |
| Shopping centers | One parking space for every [two hundred] <u>200</u> square feet of floor area of all buildings, except for restaurant, bar, nightclub, and amusement facilities, for which |

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| | parking requirements under this section shall apply. |
| Short-term rental home | One parking space if there are more than four bedrooms used for short-term rental home use, in addition to any other parking requirements under this chapter. Parking stalls may be situated in tandem and on grasscrete. |
| Single-family dwelling, farm dwelling, duplex | Two parking spaces for each dwelling unit. |
| Swimming pool, gymnasium | One parking space for every [six hundred] <u>600</u> square feet of gross floor area of pool or building. |
| Taxi stand and bus stand | One parking space for each vehicle operating from that stand. The space shall be sufficient in size to accommodate the bus or vehicle, and shall be marked "Taxi Only" or "Bus Only." |
| Tennis courts | Six parking spaces for each court. |
| Transient vacation rental in the SBR service business residential district | One parking space for every [five hundred] <u>500</u> square feet of floor area, with a minimum of one parking space for each unit. |
| U-drive stand and storage | One parking space for each vehicle operating from that stand or storage. Where the U-drive business is within a hotel district, the storage area for the U-drive vehicles shall be physically separated from the hotel parking area, and shall be physically bounded and marked [for] "U-Drive Vehicles Only." |

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SECTION 8. 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 9. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:

Department of the Corporation Counsel
County of Maui

ear:misc:041abill02:scb