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Vice-Chair  
Keani N.W. Rawlins-Fernandez

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Tamara Paltin  
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**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

November 12, 2021

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

Deputy Director of Council Services  
David M. Raatz, Jr., Esq.

2021 NOV 12 AM 11:55

OFFICE OF THE  
COUNTY CLERK

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

Dear Chair Lee:

SUBJECT: **AMENDMENTS TO BILL 118 (2021)** (PAF 21-340)

May I request the attached proposed amendments to Bill 118 (2021) be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in black ink, reading "Keani Rawlins-Fernandez".

KEANI N.W. RAWLINS-FERNANDEZ  
Council Vice-Chair

paf:ljam:21-340d

Attachment

COUNTY COMMUNICATION NO. 21-529

November 19, 2021, Council meeting

MAUI COUNTY COUNCIL  
Amendment Summary Form

Legislation: Bill 118 (2021).

Proposer: Keani N.W. Rawlins-Fernandez, Council Vice-Chair

Description: Amend the bill to:

- Alphabetize the definitions;
- Clarify that the aggregate amount of real property taxes assessed is prior to the initial application;
- Allow at least one owner, trustee, member of the board or directors, or shareholder to be a resident of Maui County, rather than a majority; and
- Incorporate various nonsubstantive revisions on spelling and terminology.

Motion: Move to amend various provisions of proposed Maui County Code Section 3.48.361 as follows:

1. In Subsection (A), move the definition of “descendant” to the end of the subsection and correct the numbering;
2. In Subsection (A)(3), change the defined term “commercial purposes” to “commercial purpose”;
3. In Subsection (B)(5) Strike “prior” before “ten tax years” and insert “prior to the initial application” after that term;
4. In Subsection (B)(6):
  - a. Replace “The majority of” with “At least one”; and
  - b. Replace “owners, trustees, board of directors, or shareholders are residents” with “owner, trustee, member of the board of directors, or shareholder must be a resident”;
5. In Subsection (C):
  - a. Strike “their”;
  - b. Replace “they” with “the owner”; and
  - c. Strike “lineal”;

November 19, 2021, Council meeting

6. In Subsection (D):
  - a. Add “and property” after the first two instances of the word “applicant”; and
  - b. Replace “designated” with “dedicated”;
7. In Subsection (E), insert “no later than December 31” after “the ninth year of each dedication period”; and
8. In Subsection (F) strike “non-lineal descendant” and replace with “non-descendant.”

Effect: The attached mark-up shows how the bill will read if the proposed amendments are approved. Additions are highlighted; deletions are bolded and struck through.

Attachments: Illustrative proposed bill, marked up to show amendments.

paf:ljam:21-340b

ORDINANCE NO. \_\_\_\_\_

BILL NO. \_\_\_\_\_ (2021)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 3.48,  
MAUI COUNTY CODE, RELATING TO REAL PROPERTY  
DEDICATED AS 'ĀINA KŪPUNA

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

SECTION 1. Chapter 3.48, Maui County Code, is amended by adding a new section to be appropriately designated and to read as follows:

**“3.48.361 Real property dedicated as ‘āina kūpuna. A.**  
**For use in this section, the following definitions apply:**

1. “Agriculture” means the production of plant and animal life for food and fiber, and for raw materials for processed products, and includes the following along with their accompanying services and facilities: fruit, vegetable, and flower growing; forestry; aquaculture; beekeeping; and grazing and dairying.

2. “‘Āina kūpuna” means real property owned in whole or in part in fee simple by one or more descendants of the person who owned the property at least eighty years prior to the application.

**“Descendant” has the same meaning as defined in section 560:1.201, Hawai‘i Revised Statutes.**

**A descendant may own the property as an individual or with other individuals, or a descendant’s beneficial ownership interest may be represented by one or more trustees. Ownership of the property may also be held by a corporation, limited liability company, or similar entity, as long as the descendant’s ownership interest in the entity is greater than 50 percent and the entity is not a corporation where the stock is sold to or owned by the general public.**

3. “Commercial **purposes** **purpose**” means the production, processing, manufacturing, warehousing, distribution, or sale of goods, or the operation of transient vacation rentals, short term rental homes, and bed and breakfast homes. Commercial purposes do not include:

a. Agriculture.



b. Real property that does not serve as the owner's principal residence and was granted, prior to May 23, 2012, a conditional permit for transient vacation rental use in accordance with the comprehensive zoning ordinance and was classified as "commercialized residential" prior to May 23, 2012.

4. "Descendant" has the same meaning as defined in section 560:1.201, Hawai'i Revised Statutes.

A descendant may own the property as an individual or with other individuals, or a descendant's beneficial ownership interest may be represented by one or more trustees. Ownership of the property may also be held by a corporation, limited liability company, or similar entity, as long as the descendant's ownership interest in the entity is greater than 50 percent and the entity is not a corporation where the stock is sold to or owned by the general public.

B. A special reserve is established to enable the owner of any real property to dedicate the real property as 'āina kūpuna for a period of ten years and to have the dedicated real property subject to the minimum tax when all of the following criteria are met:

1. The real property dedicated must qualify as 'āina kūpuna.

2. The real property dedicated must not be conveyed to a non-descendant for the duration of the dedication.

3. The real property dedicated must not be used for commercial purposes for the duration of the dedication.

4. The real property must be located in the special management area as defined in section 205A-22, Hawai'i Revised Statutes.

5. The aggregate real property taxes assessed on the property for the ~~prior~~ ten tax years prior to the initial application exceeded \$50,000.

6. ~~The majority of~~ At least one ~~owners, trustees, board of directors, or shareholders are residents~~ owner, trustee, member of the board of directors, or shareholder must be a resident of the County.

C. If any owner desires to dedicate ~~their~~ real property as 'āina kūpuna, ~~they~~ the owner must petition the director and declare in the application that if the application is approved, no portion of the dedicated real property will be conveyed to a non-descendant or used for commercial purposes for no less than ten years following approval of the application. The owner is responsible for the cost of obtaining evidence in support of the application.

1. If the applicant is not identified as an owner of the property in the records of the director, the director will require the applicant, at applicant's expense, to obtain a deed,



court order, or other reliable evidence to verify ownership of the property.

2. For purposes of determining whether the **lineal** descendant requirement has been satisfied, genealogy verification by the Office of Hawaiian Affairs or by court order will be deemed sufficient.

3. Evidence includes conveyance deeds, wills, trusts, birth certificates, death certificates, and other legally valid documentation demonstrating legal ownership and **lineal** descendanty.

D. The 'āina kūpuna application described in subsection C must be filed with the director by December 31 of any calendar year, in a form prescribed by the director.

1. Following receipt of an application, the director must make a finding of fact as to whether the applicant **and property** described in the application qualifies. If the finding is favorable to the owner, the director must approve the application and declare the real property to be dedicated. If approved, the minimum tax takes effect the succeeding tax year, and penalties and interest from the 2021 and 2022 tax years must be removed from these portions of the real property **designated dedicated** as 'āina kūpuna. No new penalties and interest will be assessed during the dedication period and the director will have the authority to waive section 3.48.250.

2. If the applicant **or property** does not qualify for the 'āina kūpuna dedication, the director must notify the applicant on or before March 1 preceding the tax year.

E. To maintain the 'āina kūpuna dedication on real property, the owner must apply for renewal during the ninth year of each dedication period **no later than December 31**, for an additional period of no less ten years subject to cancellation by the owner.

F. Failure to comply with the 'āina kūpuna restrictions on real property use beyond a period of two weeks after a notice and warning to the owner by the director, or the conveyance to a ~~**non-lineal descendant**~~ **non-descendant** automatically terminates the special minimum tax privilege retroactive to the date of the dedication, or the commencement of the latest renewal period; and all differences in the amount of taxes that were paid and those that would have been due from assessment without the minimum tax privilege are payable with a 10 percent penalty from the respective dates that these payments would have been due. The additional taxes and penalties, due and owing as a result of a breach of the dedication, constitute a paramount lien upon the real property assessed. Nothing in this subsection precludes the County from pursuing any other remedy to enforce the covenant on the use of the real property.

G. The applicant may appeal any disapproved application as in the case of an appeal from an assessment.

H. To place prospective buyers on notice of the roll back liability, the applicant must, within thirty days of notice of approval, record the dedication in accordance with the procedures of the bureau of conveyances or land court. The director will prescribe the form of the dedication."

SECTION 2. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 3. This Ordinance takes effect on approval.

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