

REQUEST FOR LEGAL SERVICES

Date: August 9, 2017
From: Robert Carroll, Chair
Land Use Committee

TRANSMITTAL

Memo to: DEPARTMENT OF THE CORPORATION COUNSEL
Attention: James Giroux, Esq.

Subject: CONDITIONAL PERMIT FOR 355 HAIKU ROAD LLC (HAIKU) (LU-18)

Background Data: Review and approve revised proposed bill. A marked-up version comparing the bill previously approved by your office against the revised proposed bill is transmitted with this request. Your coding on the bill is consistent with the Office of Council Services, lu:misc:018abill01:grs. An original, signed 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): Wednesday, August 15, 2017
REASON: For posting on the Land Use Committee meeting agenda for August 16, 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:018acc02:grs

Attachments

ORDINANCE NO. _____

BILL NO. _____ (2017)

A BILL FOR AN ORDINANCE GRANTING 355 HAIKU ROAD LLC
A CONDITIONAL PERMIT TO OPERATE A TRANSIENT VACATION RENTAL
AND TO CONDUCT SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL
DISTRICT, FOR PROPERTY SITUATED AT 355 HAIKU ROAD AND
IDENTIFIED AS A PORTION OF TAX MAP KEY NUMBER (2) 2-7-003:087,
HAIKU, MAUI, HAWAII

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

SECTION 1. Pursuant to Chapter 19.40, Maui County Code, and subject to the conditions imposed in Section 2 of this ordinance, a Conditional Permit is hereby granted to 355 Haiku Road LLC to operate a transient vacation rental (TVR) and to conduct special events within the County Agricultural District. The site is identified for real property tax purposes as a portion of tax map key (2) 2-7-003:087, comprising approximately 13.9 acres of land situated at Haiku, Maui, Hawaii, and generally shown on Exhibit "A," attached hereto and incorporated herein by reference.

SECTION 2. The granting of the Conditional Permit is subject to the following conditions:

1. That full compliance with all applicable governmental requirements shall be rendered in a timely manner.
2. That the Conditional Permit shall be valid for a period of one year from the effective date of this ordinance; provided, that an extension of the Conditional Permit beyond this one-year period may be granted pursuant to Section 19.40.090, Maui County Code. Notwithstanding the five-hundred-foot notification requirement set forth in Section 19.40.090(B), Maui County Code, 355 Haiku Road LLC shall provide, by certified mail, a notice of application for time extension to the owners and lessees of record located within 1,000 feet of the subject property.
3. That the Conditional Permit shall be nontransferable unless the Maui County Council approves a transfer by ordinance.

4. That 355 Haiku Road LLC shall exercise reasonable due care as to third parties with respect to all areas affected by the Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of the Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of \$1,000,000 naming the County of Maui as an additional insured, insuring and defending 355 Haiku Road LLC and the County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of the Conditional Permit, including, but not limited to: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by 355 Haiku Road LLC of said rights; and (2) all actions, suits, damages, and claims by whomsoever brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of the Conditional Permit. A copy of the certificate of insurance naming the County of Maui as an additional insured shall be submitted to the Department of Planning within 90 calendar days from the effective date of this ordinance, or prior to starting operations, whichever occurs first. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department of Planning and shall include the applicable tax map key and permit numbers.
5. That prior to starting TVR home operations and special event operations, including any advertising, and with the submittal of any renewal request, 355 Haiku Road LLC shall submit to the Department of Planning a detailed report addressing compliance with the conditions of the Conditional Permit. The compliance report shall be reviewed and approved by the Department of Planning prior to the start of operations and prior to any renewal of the Conditional Permit. The report shall be in a format where the condition is listed followed by a response from 355 Haiku Road LLC. A copy of the original approval shall also be submitted with this report. Evidence of compliance with permit conditions shall be included with the compliance report where applicable.
6. That 355 Haiku Road LLC shall hold no more than one conditional permit for a TVR home operation or a short-term rental home permit.

7. That 355 Haiku Road LLC shall have a current transient accommodations tax license and general excise tax license for the TVR home operations and a general excise tax license for the special events. The same general excise tax license may be used for all uses on the property, including agricultural sales, TVR home operations, and special event revenues.
8. That 355 Haiku Road LLC shall develop and use the property in substantial compliance with the representations made to the Maui Planning Commission and the Maui County Council in obtaining the Conditional Permit. Failure to so develop and use the property as represented may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
9. That a manager or managers shall be designated for the TVR home operations and the special events. The manager's name(s) and contact information shall be provided to the Department of Planning prior to starting TVR home operations or special events and when a change in the manager or contact information occurs.
10. That a manager shall:
 - a. Be accessible to guests, neighbors, and County agencies. For purposes of this section, "accessible" means being able to answer the telephone at all times, and being physically present at the property within one hour following a request by a TVR or special event guest, a neighbor, or a County agency.
 - b. Be onsite for all special events, including clean-up, when there is amplified sound or more than 50 guests.
11. That within 30 days from the effective date of this ordinance, 355 Haiku Road LLC shall provide all owners of record within 1,000 feet of the subject property with a copy of the Conditional Permit approval, and with the manager's name(s) and contact information, including telephone numbers. Evidence of compliance with this condition shall be submitted to the Department of Planning within 45 days from the effective date of this ordinance.
12. That 355 Haiku Road LLC shall notify the Department of Planning and all owners of record within 1,000 feet of the subject property of any changes in a manager's name and

contact information, including telephone numbers. Such notification shall be sent prior to or within one business day after the change in contact information occurs.

13. That 355 Haiku Road LLC shall display a two-square-foot sign along the main access road, identifying the establishment name (if any) and the manager's 24-hour telephone number prior to starting TVR home operations or conducting special events. The sign shall meet the requirements of Section 16.13.090, Maui County Code.
14. That house policies stating a quiet time of 10:00 p.m. to 8:00 a.m. shall be prominently displayed in the dwellings and shall be included in the rental agreement, which shall be signed by each registered adult guest.
15. That all TVR home operations and special events advertising shall include the permit number. TVR home reservation websites shall include the house policies or a working link to the house policies. TVR home reservation websites shall also include the maximum occupancy as no more than two persons per bedroom, including children over the age of two years old.
16. That each TVR dwelling shall be rented to only one group at a time.
17. That the maximum occupancy for the TVR home shall be no more than two persons per bedroom, including children over the age of two years old.
18. That all parking for the TVR home operations and special events shall be provided onsite. Street parking is prohibited.
19. That appropriate lighting shall be provided for parking and walkways used for events held during the evening. The Department of Planning shall approve the lighting plan as part of the compliance report required prior to starting operations.
20. That all exterior lighting shall be downward shielded. Evidence of compliance with this condition shall be submitted to the Department of Planning with the compliance report.
21. That special events, defined as events having 20 or more guests, not including registered guests of the TVR home and

not including activities such as outdoor barbecues, shall be limited as follows:

- a. Events requiring more than 30 vehicles, shall provide shuttle, valet, or limousine service for guests.
- b. 355 Haiku Road LLC, shall notify all owners of record within 1,000 feet of the subject property, of any event on the property at least one month in advance of the event.
- c. Events with more than 100 guests but less than 250 guests shall be allowed no more than once per year; the following shall also apply:
 - i. Traffic and parking for the event shall be controlled by off-duty police officers;
 - ii. The event shall conclude no later than 10:00 p.m. on Fridays or Saturdays, and by 6:00 p.m. on all other days;
 - iii. Amplified music shall conclude no later than 10:00 p.m. on Fridays or Saturdays, and by 6:00 p.m. on all other days; and
 - iv. All vehicles shall enter and exit the property from Kalanikahua Road unless otherwise directed by the off-duty police officers controlling traffic and parking.
- d. Events including up to 100 guests shall be allowed no more than 18 times per year and no more than once per week; the following shall also apply:
 - i. Amplified music shall conclude no later than 10:00 p.m. on Fridays or Saturdays, and by 7:00 p.m. on all other days; and
 - ii. All event vehicles shall enter and exit the property from Kalanikahua Road.
- e. Events such as photo shoots, fashion shows, or videotaping shall be allowed no more than twice per week and shall only take place between the hours of 8:00 a.m. and 7:00 p.m. Amplified music for such events shall not be heard beyond the property.
- f. A wedding and related activities, such as a rehearsal dinner, photo shoot, and ceremony occurring over

several days shall be considered one event. The event shall adhere to notification, music and noise amplification, time, traffic, parking, and vehicular restrictions and requirements set forth herein for each component of the event.

- g. 355 Haiku Road LLC shall hold at least two neighborhood meetings per year with the surrounding neighbors within 1,000 feet of the subject property, to discuss operations and concerns of the community. Notifications of the community meetings shall be provided at least three weeks in advance of the meeting.
- h. 355 Haiku Road LLC shall allow the surrounding neighbors to use the facility for one “block party” per year when the home is not otherwise rented.

Evidence of compliance with these conditions in sections 1-21, shall be submitted to the Department of Planning with the compliance report.

- 22. That a fire escape plan shall be posted in the interior of each sleeping room. The exit plans shall be unique to each bedroom and shall include, at a minimum, a complete floor plan of the TVR home with the following:
 - a. “You are here” marked on the exit plan;
 - b. Arrows indicating the exit path for only that sleeping room;
 - c. Meeting place to assemble after exiting the building; and
 - d. Location(s) of all fire extinguishers.
- 23. That fire extinguisher(s) with a minimum rating of 2A:10B:C shall be installed within a 75-foot travel distance of all interior portions of the facility. The fire extinguisher(s) shall be mounted in a clearly visible and accessible location to potential users.
- 24. That all smoke detectors shall be operable and tested monthly with batteries changed at least annually with documentation

of each test and battery change noted in a log. A smoke detector shall be installed in each sleeping area and in areas leading to sleeping areas. A log of the monthly testing and battery changes, if applicable, shall be submitted as part of any renewal request.

25. That the TVR home operation shall be available for bi-annual fire inspections.
26. That the TVR home operation shall be subject to periodic inspections by County enforcement personnel at reasonable times upon presentation of appropriate credentials.
27. That 355 Haiku Road LLC shall provide written verification of tax payments when filing a conditional permit renewal request. The written verification shall be the State of Hawaii Department of Taxation Form A-6, "Tax Clearance Application."
28. That with regard to event set-ups, tents, canopies, open flame, and cooking, generators, and light towers shall be in compliance with Department of Fire and Public Safety, Fire Prevention Bureau, requirements. Compliance shall be determined by the Fire Prevention Bureau.
29. That use of pyrotechnics shall be prohibited and the use of open flame at any event shall require Department of Fire and Public Safety, Fire Prevention Bureau, approval.
30. That a fire extinguisher with a minimum rating of 2A:10B:C shall be located within a 75-foot travel distance for event set-ups. Compliance shall be determined by the Department of Fire and Public Safety, Fire Prevention Bureau.
31. That any event open to the public requires site plan review and approval by the Department of Fire and Public Safety, Fire Prevention Bureau. Compliance shall be determined by the Fire Prevention Bureau.

~~32. That the property shall be classified as "Commercial" for real property tax purposes.~~

~~33~~~~32~~~~32~~. That State of Hawaii Department of Health approval of the wastewater disposal method shall be obtained prior to the start of the TVR home operations and special events.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:

Deputy Corporation Counsel
County of Maui

lu:misc:018abil01b:grs

ORDINANCE NO. _____

BILL NO. _____ (2017)

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Deputy Corporation Counsel
County of Maui

lu:misc:018abil01c:grs

