

MICHAEL P. VICTORINO
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DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

November 29, 2021

Honorable Michael Victorino
Mayor, County of Maui
200 South High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Michael P. Victorino 11/30/21
Mayor Date

For Transmittal to:

Honorable Tamara Paltin, Chair
Planning and Sustainable Land Use Committee
Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Paltin:

**SUBJECT: MAUI DRAGON FRUIT FARM LLC'S REQUEST FOR A
TIME EXTENSION AND FOR THE USES ALLOWED
UNDER THE CONDITIONAL PERMIT GRANTED BY
ORDINANCE 4295 (LAHAINA) (PSLU-17)**

Thank you for your careful and thorough review of the above-referenced request. This letter provides follow-up information on questions that you and your Committee have posed during recent discussions.

Compliance with Current Conditions

It appears that the Applicant is in compliance with all conditions of Ordinance No. 4295, as follows (some conditions have been abbreviated, as indicated by "..." for readability):

1. That full compliance with all applicable governmental requirements shall be rendered in a timely manner. Status: compliant; a recent inspection verified compliance.
2. That the Conditional Permit shall be valid for a period of two years from the effective date of this ordinance; provided that, notwithstanding Section 19.40.090(C), Maui County Code, only the Council may grant an extension of this Conditional Permit beyond this two-year period, provided Maui Dragon Fruit Farm LLC complies with the application requirements of Section 19.04.090(A),

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Maui County Code, and the notice requirements of Section 19.04.090(B), Maui County Code. Status: compliant; the time extension is pending with the County Council.

3. That the Conditional Permit shall be nontransferable unless the Council approves the transfer by ordinance. Status: compliant; the permit has not been transferred.
4. That Maui Dragon Fruit Farm LLC shall exercise reasonable due care as to third parties with respect to all areas affected by this subject Conditional Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in the aggregate naming the County of Maui as an additional insured.... Status: compliant.
5. That Maui Dragon Fruit Farm LLC shall develop and use the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit.... Status: compliant.
6. That the gift shop shall open no earlier than 9:00 a.m. and shall close by 8:00 p.m. Status: compliant.
7. That special events shall be limited to fifty guests and be limited to two times per calendar month; provided, that one special local agriculture event may be held once a year with traffic and safety measures as recommended by the Maui Police Department to be provided. Status: compliant. Due to the COVID-19 pandemic, scheduled special events (e.g., weddings) were canceled and re-booked, sometimes resulting in months with no weddings and others with more than two weddings. The annual number of weddings did not exceed 24 and all were limited to 50 guests. Since COVID restrictions have loosened, compliance has been maintained.
8. That amplified sound is prohibited. Status: compliant. It should be noted that microphones have been used for speaking and that one wedding had drums, both of which are considered compliant.
9. That an owner of Maui Dragon Fruit Farm LLC or a professional event planner shall be required to be present during all events and same-day event clean-up. If a professional planner is used, then an owner of Maui Dragon Fruit Farm LLC shall be accessible during all events.... Status: compliant.
10. That all special events shall be concluded by 8:00 p.m.; provided, that a special local agriculture event may begin no earlier than 9:00 a.m. and shall be concluded

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by 5:00 p.m. Status: compliant. It should be noted that the Applicant's long-term tenants have had parties over the years, which are not subject to these permit conditions.

11. That event clean-up shall be concluded and all exterior lighting shall be shut off by 8:30 p.m. Status: compliant. Lights have been shut-off by 8:30, though on-site residents may have their lights on after this time. Also, to minimize disturbance to neighbors, some clean-up has occurred the next day.
12. That all exterior lighting shall be downward shielded. Status: compliant.
13. That all parking related to the gift shop and events shall be onsite; no street parking is allowed. Status: compliant.
14. That the maximum onsite parking shall be limited to seventy-six stalls. Status: compliant.
15. That for events requiring more than seventy-six parking stalls, a shuttle service shall be provided for guests. Status: compliant.
16. That Maui Dragon Fruit Farm LLC shall provide an information sheet providing neighbors with a contact telephone number and a copy of the Conditional Permit listing permit conditions. Status: compliant.
17. That a sign shall be placed at the entrance of the property with the farm name and a contact telephone number. Status: compliant.
18. That all State of Hawaii Department of Health applicable requirements shall be met.... Status: compliant.
19. That review and approval are required by the Fire Prevention Bureau for events open to the public with fifty or more people in attendance, when temporary tents or canopies in excess of 700 square feet in size are utilized, or when open flames, such as lanterns or bonfires or other potential fire hazards will be used. Status: compliant. The Applicant has never had public events with tents in excess of 700 square feet, and the Applicant verifies these requirements periodically with the Fire Prevention Bureau.
20. That a compliance report shall be submitted by Maui Dragon Fruit Farm LLC and approved by the Department of Planning prior to starting operations. Status: compliant: the compliance report was submitted as required.

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21. That upon renewal of this Conditional Permit, Maui Dragon Fruit Farm LLC shall submit a list of all events including the dates, times, type, and number of attendees. Status: compliant: the list was submitted as required.

Required Agricultural Use

Farm dwellings are considered to be accessory uses to the principal use of agriculture. As such, properties that are developed with farm dwellings are required to maintain at least 51% of the useable area of the property in agricultural use. A compliance inspection showed that the majority of the useable area of the subject parcel is being used for agricultural purposes – whether it is being prepared for plantings, has been planted and is being cultivated, is being harvested, or is temporarily fallow.

Zipline and Aquaball

The Department had previously approved the Applicant having a zipline and aquaball as part of the farm tour. With the adoption of Ordinance No. 5238, the Applicant is required to obtain a Conditional Permit for the zipline within one year of the ordinance's enactment, or by August 13, 2022. The Department's last statement on the aquaball is that a Conditional Permit would be required, though it may not have been appropriate for the Department's original position to change.

Because both uses were considered during the Maui Planning Commission's review of the Conditional Permit amendment and time extension requests – though the uses were understood to be allowed at that time – the Council could consider adding these uses to those allowed by the Conditional Permit.

Miscellaneous Issues

Police Reports – Department staff checked records over the past six months, and no police reports were filed on the property during that time.

Panel Van – the Department did not inspect the panel van that is shown in a recent aerial image; it is not uncommon for active farms to have such vehicles.

Dinners – dinners are not allowed as part of a farm tour unless the menu consists predominantly of the items seen on the tour. Two dinners have occurred on the property and are considered compliant: they were related to two separate weddings whose participants and families had taken the farm tour, and asked if they could pick-up and eat a take-out dinner at the outdoor farm tables since restaurant dining options were limited during COVID. The gatherings concluded before dark and no outdoor lighting was used. The Applicant has been informed that she could register an "Agricultural Food Establishment" as a Commercial Agricultural Structure pursuant to Sec. 19.30A.072, Maui County Code, which would allow her to serve dinners.

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Recommendation

The pending requests are (a) for a time extension of the original Conditional Permit to allow agricultural-related activities, selling non-agricultural-related items and agricultural products not grown on the property, and certain special events, and (b) to amend the original Conditional Permit to allow the two-bedroom farm dwelling to be used for transient vacation rental (TVR). Since these requests were submitted, the Applicant has decided to phase-out the special events.

Given the above information, the Department recommends that:

- the Conditional Permit time extension and amendment for TVR use be approved subject to the 39 conditions provided in the bill transmitted by County Communication No. 18-34;
- special events be restricted as follows:
 - can only be conducted until July 15, 2022, after which they must cease
 - are limited to no more than 11 total events
 - cannot take place before 12:00 pm or after 8:00 pm
 - can have no more than 45 attendees
- the zipline and aquaball be added as allowable uses, subject to the conditions established by Sec. 19.40.080, Maui County Code, and provided that the uses do not expand over those that are existing.

Thank you for the opportunity to respond. Should you have any questions, please feel free to transmit them to the Department of Planning via transmittal through the Office of the Mayor.

Sincerely,



MICHELE MCLEAN, AICP
Planning Director

xc: Crystal Schmitt, Applicant (PDF)
Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Jacky Takakura, Acting Planning Program Administrator (PDF)
Kimberley Willenbrink, Staff Planner (PDF)
Project File

MCM:KCW:atw

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