

COUNCIL OF THE COUNTY OF MAUI
PLANNING AND SUSTAINABLE LAND
USE COMMITTEE

January 7, 2022

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Planning and Sustainable Land Use Committee, having met on August 19, 2021, November 18, 2021, and December 2, 2021 (reconvened) makes reference to the following:

1. County Communication 18-34, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 4295 (2016), GRANTING MAUI DRAGON FRUIT FARM LLC A CONDITIONAL PERMIT TO CONDUCT AGRICULTURAL RELATED ACTIVITIES, SELL NON-AGRICULTURAL RELATED ITEMS AND AGRICULTURAL PRODUCTS NOT GROWN ON THE PROPERTY, AND TO CONDUCT CERTAIN SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT AND TO ALLOW THE TRANSIENT VACATION RENTAL (TVR) OF A TWO BEDROOM FARM DWELLING IN THE COUNTY AND STATE AGRICULTURAL DISTRICTS ON AN APPROXIMATELY 3.0 ACRE PORTION OF A 27.528 ACRE PARCEL OF LAND, LOCATED AT 833 PUNAKEA LOOP, LAHAINA, MAUI, HAWAII."

The purpose of the proposed bill is to grant a Conditional Permit to Lawrence and Crystal Schmitt of Maui Dragon Fruit Farm LLC, to conduct agricultural related activities, sell non-agricultural related items and agricultural products not grown on the property, conduct certain special events, and allow transient vacation rental ("TVR") use of a two-bedroom farm dwelling on a three-acre portion of the property, identified for real property tax purposes as tax map key

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(2) 4-7-001:044 (por.), located at 833 Punakea Loop, Lahaina, Maui, Hawaii.

2. Correspondence dated November 8, 2021, from the County Clerk, transmitting Planning and Sustainable Land Use Committee Report 21-85, which was recommitted by the Council at its meeting of November 5, 2021.

Your Committee notes the Council's Land Use Committee (2017-2019 Council term) met on January 31, 2018.

By correspondence dated August 13, 2021, the Chair of your Committee transmitted a revised proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE 4295, GRANTING MAUI DRAGON FRUIT FARM LLC A CONDITIONAL PERMIT TO CONDUCT AGRICULTURAL RELATED ACTIVITIES, SELL NON-AGRICULTURAL RELATED ITEMS AND AGRICULTURAL PRODUCTS NOT GROWN ON THE PROPERTY, AND TO CONDUCT CERTAIN SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT, FOR PROPERTY SITUATED AT 833 PUNAKEA LOOP, LAHAINA, MAUI, HAWAII."

The purpose of the revised proposed bill is to remove the use of a two-bedroom farm dwelling as a TVR due to the applicant's withdrawal of the request.

During its meeting of August 19, 2021, your Committee was advised that under Section 8 of Ordinance 5238 (2021), because the parcel is less than 50 acres in size, it did not qualify for a zipline use extension without first obtaining a Conditional Permit. Under the ordinance, "the owner or operator of the commercial zipline or canopy tour must either obtain a Conditional Permit or cease operation of the nonconforming use" by August 13, 2022.

Your Committee agreed to further amend the revised proposed bill to align the expiration date of the Conditional Permit with the expiration

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date of the Special Use Permit, which received an extension in 2020, to March 4, 2025.

By correspondence dated September 7, 2021, the Department of the Corporation Counsel transmitted a revised proposed bill granting a request from Lawrence and Crystal Schmitt of Maui Dragon Fruit Farm LLC, for a time extension and for the uses allowed under the Conditional Permit granted by Ordinance 4295.

Your Committee notes it previously reported on this matter through Committee Report 21-85. At its meeting of September 17, 2021, the Council postponed consideration of CR 21-85, pending an investigation into the use of recreational vehicles on the property as housing for farm workers.

By correspondence dated November 5, 2021, the Department of Planning stated the Department inspectors observed no recreational vehicles on the property and concluded that the property was being operated in compliance with all applicable land use regulations.

At its meeting of November 5, 2021, the Council recommitted Planning and Sustainable Land Use Committee Report 21-85 for further discussion on the matter.

By correspondence dated November 17, 2021, the owners of Maui Dragon Fruit Farm LLC requested an extension to their Conditional Permit specifically to phase out special wedding events after the completion of the eleven events currently on their calendar, with the last wedding scheduled for July 12, 2022.

Your Committee discussed the currently scheduled events and the proposal from the owners of Maui Dragon Fruit Farm LLC to phase out special wedding events and supported the extension of the Conditional Permit to July 12, 2022. Your Committee prohibited any rescheduling or substitutions of events should one of the 11 events cancel.

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Your Committee further discussed concerns by neighbors and Maui Dragon Fruit Farm LLC's owners of excessive noise and operation of activities such as the aquaball and zipline, especially after hours. To allay these concerns, your Committee limited the hours of operation for the aquaball and zipline activities and mandated that cameras with visual and audio live streaming capability be installed on the property.

Your Committee also supported allowing the Planning Director authority to issue notices of violation and cease operations for events or activities if a violation of terms of the Conditional Permit is found.

Following its discussion with the Department and the owners of Maui Dragon Fruit Farm LLC, your Committee revised the proposed bill to add additional conditions to the permit for the property as follows:

1. That the Conditional Permit is valid until July 12, 2022, and, regardless of Section 19.40.090(C), Maui County Code, only the Council may grant an extension of this Conditional Permit beyond July 12, 2022, if Maui Dragon Fruit Farm LLC complies with the application requirements of Section 19.40.090(A), Maui County Code, and the notice requirements of Section 19.40.090(B), Maui County Code.
2. That drums and amplified sound are prohibited.
3. That Maui Dragon Fruit Farm LLC is approved to conduct the remaining eleven special event weddings, as listed on the manager's list of booked events dated November 16, 2021, including a wedding on July 12, 2022, after which all weddings must cease. No substitution or rescheduling of weddings is permitted.
4. That the Planning Director has the authority to issue notices of violation and cease operations for the special events or

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activities on the property if a violation of the terms of the Conditional Permit is found.

5. That the aquaball activity is limited to daylight hours, Monday through Friday.
6. That the manager of Maui Dragon Fruit Farm LLC must install video surveillance cameras, with audio capability, streamed to the owner and manager's mobile devices. A camera must be installed at the entrance of the property, pointed at the events area, and installed at the zipline area, pointed at the zipline operations.
7. That the zipline operation for commercial and noncommercial use is limited to 8:00 a.m. to 5:00 p.m., Monday through Friday. The zipline operation must conclude by 5:00 p.m.

Your Committee voted 9-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Paltin, Vice-Chair King, and members Johnson, Kama, Lee, Molina, Rawlins-Fernandez, Sinenci, and Sugimura voted "aye."

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE 4295 AND GRANTING MAUI DRAGON FRUIT FARM LLC A CONDITIONAL PERMIT TO OPERATE A GIFT SHOP AND CONDUCT SPECIAL EVENTS AT 833 PUNAKEA LOOP, LAHAINA, MAUI, HAWAII," incorporating your Committee's revisions and nonsubstantive revisions.

Your Planning and Sustainable Land Use Committee
RECOMMENDS the following:

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1. That Bill _____ (2022), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE 4295 AND GRANTING MAUI DRAGON FRUIT FARM LLC A CONDITIONAL PERMIT TO OPERATE A GIFT SHOP AND CONDUCT SPECIAL EVENTS AT 833 PUNAKEA LOOP, LAHAINA, MAUI, HAWAI'I," be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 18-34 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.



TAMARA PALTIN, Chair

ORDINANCE NO. _____

BILL NO. _____ (2022)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE 4295 AND GRANTING MAUI DRAGON FRUIT FARM LLC A CONDITIONAL PERMIT TO OPERATE A GIFT SHOP AND CONDUCT SPECIAL EVENTS AT 833 PUNAKEA LOOP, LAHAINA, MAUI, HAWAII

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

SECTION 1. In accordance with Chapter 19.40, Maui County Code, the Conditional Permit granted by Ordinance 4295 (2016), is amended in SECTION 2 as follows:

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

1. That full compliance with all applicable governmental requirements [~~shall~~] must be rendered in a timely manner.
2. That the Conditional Permit [~~shall be~~] is valid [~~for a period of two years from the effective date of this ordinance; provided that, notwithstanding~~] until July 12, 2022, and, regardless of 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] July 12, 2022, if Maui Dragon Fruit Farm LLC complies with the application requirements of Section [19.04.090(A)] 19.40.090(A), Maui County Code, and the notice requirements of Section [19.04.090(B)] 19.40.090(B), Maui County Code.
3. That the Conditional Permit [~~shall be~~] is nontransferable unless the Council approves the transfer by ordinance.

4. That Maui Dragon Fruit Farm LLC [shall] must exercise reasonable due care [as] to third parties [with respect to] in all areas affected by [this subject] the Conditional Permit, and [shall] must 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, insuring and defending Maui Dragon Fruit Farm LLC and the County of Maui against any and all claims or demands for property damage, personal injury, [and/or] or death arising out of this 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 Maui Dragon Fruit Farm LLC of [said] its permitted 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 this Conditional Permit. A copy of the certificate of insurance naming the County of Maui as an additional insured [shall] must be submitted to the Department of Planning within ninety calendar days from the effective date of this ordinance.
5. That Maui Dragon Fruit Farm LLC [shall] must develop and use the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to [so] develop the property accordingly may result in the revocation of the Conditional Permit [pursuant to] under Section 19.40.080, Maui County Code.
6. That the gift shop [shall] must open no earlier than 9:00 a.m. and [shall] must close by 8:00 p.m.
7. That special events [shall] must be limited to fifty guests and be limited to two times per calendar month[; provided, that], except 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.
8. That drums and amplified sound [is] are prohibited.

9. That [an owner] a manager of Maui Dragon Fruit Farm LLC or a professional event planner [shall be required to] must be present during all events and same-day event clean-up. If a professional planner is used, then [an owner] a manager of Maui Dragon Fruit Farm LLC [shall] must be accessible during all events. Being accessible means being able to answer the telephone at all times, and being able to be physically present at the property within one hour following a request by a guest, neighbor, or County agency.
10. That all special events [shall] must be concluded by 8:00 p.m.[]; provided, that[, except a special local agriculture event may begin no earlier than 9:00 a.m. and [shall] must be concluded by 5:00 p.m.
11. That event clean-up [shall] must be concluded and all exterior lighting [shall] must be shut off by 8:30 p.m.
12. That all exterior lighting [shall] must be downward shielded.
13. That all parking related to the gift shop and events [shall] must be onsite; no street parking is allowed.
14. That the maximum onsite parking [shall] must be limited to seventy-six stalls.
15. That for events requiring more than seventy-six parking stalls, a shuttle service [shall] must be provided for guests.
16. That Maui Dragon Fruit Farm LLC [shall] must provide an information sheet providing neighbors with a contact telephone number and a copy of the Conditional Permit listing permit conditions.
17. That a sign [shall] must be placed at the entrance of the property with the farm name and a contact telephone number.
18. That all State of Hawaii Department of Health applicable requirements [shall] must be met. [(Compliance [shall] will be determined by the Department of Health.[])]

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.
20. That a compliance report [shall] must be submitted by Maui Dragon Fruit Farm LLC and approved by the Department of Planning prior to starting operations.
21. That upon renewal of this Conditional Permit, Maui Dragon Fruit Farm LLC [shall] must submit a list of all events, including the dates, times, type, and number of attendees.
22. That Maui Dragon Fruit Farm LLC is approved to conduct the remaining eleven special event weddings, as listed on the manager's list of booked events dated November 16, 2021, including a wedding on July 12, 2022, after which all weddings must cease. No substitution or rescheduling of weddings is permitted.
23. That the Planning Director has the authority to issue notices of violation and cease operations for the special events or activities on the property if a violation of the terms of the Conditional Permit is found.
24. That the aquaball activity is limited to daylight hours, Monday through Friday.
25. That the manager of Maui Dragon Fruit Farm LLC must install video surveillance cameras, with audio capability, streamed to the owner and manager's mobile devices. A camera must be installed at the entrance of the property, pointed at the events area, and installed at the zipline area, pointed at the zipline operations.
26. That the zipline operation for commercial and noncommercial use is limited to 8:00 a.m. to 5:00 p.m., Monday through Friday. The zipline operation must conclude by 5:00 p.m."

SECTION 2. 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 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

A handwritten signature in black ink, consisting of a series of loops and curves, positioned above a horizontal line.

Department of the Corporation Counsel
County of Maui

pslu:misc:017abill05:wal