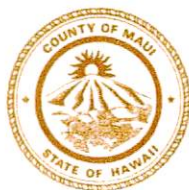


MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING

COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793

April 24, 2020

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

APPROVED FOR TRANSMITTAL

Michael P. Victorino 4/27/20
Mayor Date

For Transmittal to:

Honorable Alice L. Lee, Chair
and Members of the Maui County Council
200 South High Street
Wailuku, Hawaii 96793

Dear Chair Lee and Members:

SUBJECT: APPLICATION FOR A TRANSFER (WITH MODIFIED AND DELETED CONDITIONS) AND A TIME EXTENSION OF A CONDITIONAL PERMIT (CP) TO HELAINA DIMARTINO (DAUGHTER OF PERMIT HOLDER MARTIN HERLING) FOR THE BANYAN TREE TRANSIENT VACATION RENTAL OPERATING AS A BED AND BREAKFAST, LOCATED AT 3265 BALDWIN AVENUE, MAKAWAO, ISLAND OF MAUI, HAWAII; TMK: (2) 2-4-002:002 (CP 2000/0012) (SUP2 2000/0007)

The Department of Planning (Department) is transmitting for your review and action the Conditional Permit (CP) application for a transfer (with modified and deleted conditions) and a time extension of a CP to Helaina DiMartino for the Banyan Tree Bed and Breakfast. A summary of the application for the use as a transient vacation rental is as follows:

APPLICATION SUMMARY	
Application - CP	The CP application is for the transfer (with modified and deleted conditions) and time extension of the existing Banyan Tree Bed and Breakfast. The current permit is held by Martin Herling who proposes to transfer the permit to his daughter, Helaina DiMartino. The transient vacation rental operation will continue as currently permitted. This application proposes an amendment to Ordinance No. 3377, Bill No. 24 (2006). The original Ordinance was effective on April 25, 2006.

COUNTY COMMUNICATION NO. 20-274

Honorable Michael P. Victorino, Mayor
 For Transmittal to:
 Honorable Alice L. Lee, Chair
 April 24, 2020
 Page 2

APPLICATION SUMMARY	
Applicant/Owner	Helaina DiMartino
Tax Map Key	(2) 2-4-002:002
Address	3265 Baldwin Avenue, Makawao, Hawaii
Area	2.102 acres
Land Use Designations	State Land Use District: Agricultural Maui Island Plan: Rural Growth Boundary Community Plan: Rural – Makawao, Pukalani, & Kula Title 19, Zoning: RU-1 Rural Zoning District NOT in the Special Management Area (SMA)
Brief Description	The Applicant is requesting a transfer (with modified and deleted conditions) and a time extension of the existing CP to operate the Banyan Tree Bed and Breakfast as a permitted transient vacation rental. Martin Herling (original permit holder) is the father of Helaina DiMartino. The operation of the Banyan Tree Bed and Breakfast is proposed to continue as permitted since 2006. No changes to the existing operation are proposed. There are no outstanding Requests for Service regarding the Banyan Tree.
Public Hearing	Held by Maui Planning Commission (Commission) on November 26, 2019 in Wailuku, Hawaii.
Testimony	No objections to the proposed transfer and time extension of the Banyan Tree Bed and Breakfast were given.
Recommendation	The Commission recommended approval with conditions of the CP by a vote of six ayes with one Commissioner abstaining and one Commissioner absent.

The Commission reviewed the CP request on November 26, 2019, and recommended approval with conditions. The conditions were modified to reflect a new permit holder and the fulfillment of past conditions of Ordinance No. 3377, Bill No. 24 (2006). The conditions of approval reflected in the amended Ordinance are as follows:

1. That the CP shall be valid for a period of five years from the effective date of this amended ordinance, provided that an extension of this CP beyond this five-year period may be granted pursuant to Section 19.40.090, Maui County Code (MCC).
2. That the CP shall be nontransferable unless the Maui County Council (Council) approves the transfer by Ordinance.

Honorable Michael P. Victorino, Mayor

For Transmittal to:

Honorable Alice L. Lee, Chair

April 24, 2020

Page 3

3. That Helaina DiMartino shall exercise reasonable due care as to third parties with respect to all areas affected by subject CP and shall procure at her own cost and expense, and shall maintain during the entire period of this CP, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending Helaina DiMartino and the County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this CP, 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 Helaina DiMartino of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this CP. A copy of the certificate of insurance naming the County of Maui as a named additional insured shall be submitted to the Department within 90 calendar days from the date of this amended Ordinance.
4. That Helaina DiMartino shall operate the property in substantial compliance with the representations made to the Council in obtaining the CP. Failure to so operate the property may result in the revocation of the CP pursuant to Section 19.40.080, MCC.
5. That full compliance with all applicable governmental requirements shall be rendered.
6. That full compliance with the conditions of the Land Use Commission Special Permit (SUP2 2000/0007) shall be observed.
7. That Helaina DiMartino shall execute a hold harmless agreement indemnifying the County should final sight distance not be adequate to meet County standards.

As Council approval is required for the transfer of the CP, the Department respectfully transmits the subject application to the Council for consideration. Accordingly, attached for your review are the following documents:

Honorable Michael P. Victorino, Mayor
For Transmittal to:
Honorable Alice L. Lee, Chair
April 24, 2020
Page 4

1. Proposed bill entitled, "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3377, BILL NO. 24 (2006) TO DELETE CERTAIN CONDITIONS, GRANT A TIME EXTENSION, AND TO TRANSFER A CONDITIONAL PERMIT TO HELANIA DiMARTINO FOR THE BANYAN TREE TRANSIENT VACATION RENTAL WITHIN THE RU-1 RURAL ZONING DISTRICT FOR PROPERTY SITUATED AT 3265 BALDWIN AVENUE, HAMAKUPOKO – MAKAWAO, MAUI HAWAII";
2. Letter from Michele McLean, AICP, Planning Director, to Mr. Brett Davis, Chris Hart and Partners, Inc. dated January 24, 2020, with Commission's recommendation for Council approval of the CP for the transfer to Helaina DiMartino and time extension of the Banyan Tree Bed and Breakfast transient vacation rental;
3. Department's Memorandum and Recommendation to the Commission of the CP dated November 26, 2019; and
4. Minutes of the November 26, 2019 Commission meeting.

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

Attachments

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Kurt F. Wollenhaupt, Staff Planner (PDF)
Brett Davis, Chris Hart and Partners (PDF)
Helaina DiMartino, Applicant (PDF)

MCM:KFW:lak

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ORDINANCE NO. _____

BILL NO. _____ (2020)

A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 3377,
BILL NO. 24 (2006) TO DELETE CERTAIN CONDITIONS, GRANT A
A TIME EXTENSION AND TO TRANSFER A CONDITIONAL PERMIT
TO HELAINA DiMARTINO FOR THE BANYAN TREE TRANSIENT
VACATION RENTAL WITHIN THE RU-1 RURAL ZONING DISTRICT
FOR PROPERTY SITUATED AT 3265 BALDWIN AVENUE,
HAMAKUAPOKO - MAKAWAO, MAUI, HAWAII

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

SECTION 1. Ordinance No. 3377, Bill No. 24 (2006), is amended by
amending Section 1 to read as follows:

“SECTION 1. Pursuant to Chapter 19.40, Maui County Code,
and subject to the conditions set forth in Section 2 of this ordinance,
a Conditional Permit is hereby granted to [Marty Herling] Helaina
DiMartino for operation of the Banyan Tree Bed & Breakfast, a
transient vacation rental located within the RU-1 Rural Zoning
District. The site is identified for real property tax purposes by Tax
Map Key Number: (2) 2-4-002:002, comprising approximately 2.102
acres of land at 3265 Baldwin Avenue in Hamakuapoko - Makawao,
Maui, Hawaii.”

SECTION 2. Ordinance No. 3377, Bill No. 24 (2006), is amended by
amending Section 2 to read as follows:

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

1. That the Conditional Permit shall be valid for a period
of [five (5) years] 5 years from the effective date of this amended
ordinance; provided, that an extension of this Conditional Permit
beyond this five-year period may be granted pursuant to Section
19.40.090, Maui County Code.

2. That the Conditional Permit shall be nontransferable
unless the Council approves transfer by ordinance.

3. That [Marty Herling] Helaina DiMartino shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at [his] her 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 ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as a named additional insured, insuring and defending [Marty Herling] Helaina DiMartino and the County of Maui against any and all claims or demands for property damage, personal injury, and/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 [Marty Herling] Helaina DiMartino 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 this Conditional Permit. A copy of the certificate of insurance naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this amended ordinance.

4. That [Marty Herling] Helaina DiMartino shall develop 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 may result in the revocation of the Conditional Permit pursuant to Section 19.40.080 of the Maui County Code.

5. That full compliance with all applicable governmental requirements shall be rendered.

6. That full compliance with the conditions of the Land Use Commission Special Use Permit (SUP2 2000/0007) shall be rendered.

7. [That Marty Herling shall grade the banks on each side of the driveway to improve sight distance.

8. That Marty Herling shall repave the driveway upon completion of the grading of the banks.

9.] That [Marty Herling] Helaina DiMartino shall execute a hold harmless agreement indemnifying the County should final sight distance after grading of the banks not be adequate to meet County standards.

[10. That Marty Herling shall install warning signage for vehicles traveling in an east and westbound direction along Baldwin Avenue.

11. That Marty Herling shall continue to meet the requirements for individual wastewater treatment systems of the State Department of Health.]”

SECTION 3. Material to be repealed is bracketed. New material is underscored.

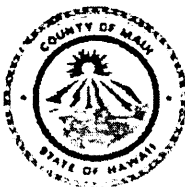
SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM
AND LEGALITY:



MICHAEL J. HOPPER
Deputy Corporation Counsel
County of Maui
2020-0231
2020-04-02 Ordinance CP Banyan Tree

MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director



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

January 24, 2020

CERTIFIED MAIL - #7018 2290 0001 0724 2641

Mr. Brett Davis
Chris Hart & Partners, Inc.
115 North Market Street
Wailuku, Hawaii 96793-1717

Dear Mr. Davis:

SUBJECT: TRANSFER AND TIME EXTENSION OF CONDITIONAL PERMIT (CP) AND STATE LAND USE COMMISSION SPECIAL PERMIT (SUP2) TO HELAINA DIMARTINO (DAUGHTER OF CURRENT PERMIT HOLDER MARTIN HERLING) FOR THE BANYAN TREE BED AND BREAKFAST, LOCATED AT 3265 BALDWIN AVENUE, MAKAWAO, ISLAND OF MAUI, HAWAII; TMK: (2) 2-4-002:002 (CP 2000/0012) (SUP2 2000/0007)

At its regular meeting on November 26, 2019, the Maui Planning Commission (Commission) reviewed the requests to transfer and extend the SUP2 and CP to Helaina DiMartino from her father and permit holder Martin Herling for the existing Banyan Tree Bed and Breakfast transient vacation rental operation located at 3265 Baldwin Avenue in Makawao. This operation has been successfully operating since approval by County Council Ordinance in 2006.

The Commission voted to approve the transfer and time extension of the SUP2 and recommended approval of the transfer and time extension of the CP to the Maui County Council.

STATE LAND USE COMMISSION SPECIAL PERMIT

The SUP2 is subject to the following conditions:

1. That the SUP2 shall be valid until **December 31, 2024**, or in accordance with the expiration date of the CP whichever is later, subject to extension by the Planning Director (Director) upon a timely request for extension

filed within 90 days prior to its expiration. The Director may forward the time extension request to the Commission for review and approval and may require a public hearing on the time extension by the Commission.

2. That the subject SUP2 shall not be transferred without the prior written approval of the Director. However, in the event that a contested case hearing preceded issuance of said SUP2, a public hearing shall be held by the Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
3. That the Applicant, its successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject SUP2 and shall procure at its own cost and expense, and shall maintain during the entire period of this SUP2, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui and State of Hawaii as an additional insured, insuring and defending the applicant, County of Maui and State of Hawaii against any and all claims or demands for property damage, personal injury and/or death arising out of this 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 the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a policy naming the County of Maui as an additional insured shall be submitted to the Department within 90 calendar days from the date of transmittal of the decision and order. The proof of insurance and all subsequent certifications of insurance coverage shall include the applicable Tax Map Key (TMK) and permit numbers.
4. That full compliance with all applicable governmental requirements shall be rendered.
5. That the Applicant shall submit to the Department two copies of a detailed report addressing its compliance with the conditions established with the subject SUP2 and CP. The compliance report shall be submitted to the Planning Department with the renewal of the subject SUP2 and CP.
6. That the property shall not be used as a venue for special events.

7. That the operation of the transient vacation rental complex shall be consistent with the character of the existing neighborhood.
8. That the uses on the premises shall create no impact greater than a typical residential home in the neighborhood.
9. That the occupancy policy applicable to the transient vacation rental units shall be consistent with Maui County and Federal standards related thereto.
10. That no exterior live amplified sound shall be permitted on the premises.
11. That the guests of the transient vacation rental facilities shall be required to limit the number of off-site visitors to the property, consistent with the goal of minimizing the impact of the use upon the neighborhood.
12. That the number of guest rooms on the property shall be restricted to a maximum of seven, with the understanding that no rooms for transient guests shall be contained in any other or future residential dwelling to be constructed on the premises.
13. That the "accessory dwelling" built on the subject property in 2008 shall be for personal use of the owner/lessor of the property.
14. That no portion of the "accessory dwelling" shall exceed 20 feet in height, regardless of the number of stories.
15. That the use of the "accessory dwelling" shall be limited to long-term residential use only and not less than 180 days per term.
16. That the Applicant shall educate all guests about potential detrimental impacts to natural and cultural resources, particularly to the coastal environment and near shore waters. Evidence of such an education program shall be provided to the Department.

The conditions of this SUP2 shall be enforced pursuant to §§205-12 and 205-13, Hawaii Revised Statutes.

The Maui Planning Commission adopted the Planning Department's Report and Recommendation prepared for the November 26, 2019, meeting as its Findings of Fact, Conclusions of Law, and Decision and Order and authorized the Director of Planning to transmit said written Decision and Order on behalf of the Planning Commission.

CONDITIONAL PERMIT

The Commission recommended approval of the CP to the Maui County Council, subject to the following conditions:

1. That the CP shall be valid for a period of five years from the effective date of this ordinance; provided, that an extension of this permit beyond this five year period may be granted pursuant to Section 19.40.090, Maui County Code.
2. That the CP shall be nontransferable unless the Council approves the transfer by Ordinance.
3. That the Applicant and its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at his/her/their 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 ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending the Applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this CP, 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 the Applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this CP. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department within 90 calendar days from the date of approval of this CP. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department and shall include the applicable TMK and permit numbers.
4. That Helaina DiMartino shall operate the property in substantial compliance with the representations made to the Maui County Council in obtaining the CP. Failure to so operate the property may result in the revocation of the CP pursuant to Section 19.40.080, Maui County Code.
5. That full compliance with all applicable governmental requirements shall be rendered.

6. That full compliance with the conditions of the State Land Use Commission Special Permit (SUP2 2000/0007) shall be observed.
7. That Helaina DiMartino shall execute a hold harmless agreement indemnifying the County should sight distance not be adequate to meet County standards for the subject property's driveway.

That CP conditions will be enforced pursuant to the provisions of Chapter 19.530, §19.530.030 of the Maui County Code, as amended, 1980; and the *Rules for Administrative Procedures and Civil Fines for Violations of Titles 12, 14, 16, 19, and 20 of the Maui County Code*.

The Commission adopted the Department's Report and Recommendations prepared for the November 26, 2019, meeting as its Findings of Fact, Conclusions of Law, and Recommendation and authorized the Director to transmit said Recommendation to the Maui County Council on behalf of the Commission.

Thank you. If additional clarification is required, please contact Staff Planner Kurt Wollenhaupt at kurt.wollenhaupt@mauicounty.gov or at (808) 270-1789.

Sincerely,



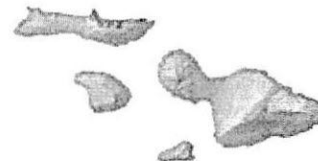
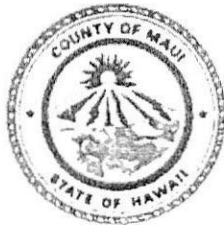
MICHELE MCLEAN, AICP
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John S. Rapacz, Planning Program Administrator (PDF)
Kurt F. Wollenhaupt, Staff Planner (PDF)
Helaina DiMartino
Department of Public Works
Department of Finance, Real Property Tax Division
Department of Fire & Public Safety
Brett Davis, Consultant, (PDF)
Project File

MCM:KFW:lk

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MICHAEL P. VICTORINO
Mayor
MICHELE CHOUTEAU MCLEAN, AICP
Director
JORDAN E. HART
Deputy Director




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

November 26, 2019

MEMORANDUM

TO: Lawrence Carnicelli, Chair
and Members of the Maui Planning Commission

FROM: Michele McLean, AICP, Planning Director 

SUBJECT: **TRANSFER AND TIME EXTENSION OF CONDITIONAL PERMIT (CP) AND STATE LAND USE COMMISSION SPECIAL PERMIT (SUP2) TO HELAINA DIMARTINO (DAUGHTER OF CURRENT PERMIT HOLDER MARTIN HERLING) FOR THE BANYAN TREE BED AND BREAKFAST, LOCATED AT 3265 BALDWIN AVENUE, MAKAWAO, ISLAND OF MAUI, HAWAII; TMK: (2) 2-4-002:002 (CP 2000/0012) (SUP2 2000/0007)**

Martin Herling is the primary permit holder for Conditional Permit (CP) 2000/0012 and State Land Use Commission Special Permit (SUP2) 2000/0007 for the Banyan Tree Bed and Breakfast. The Banyan Tree is a seven bedroom transient vacation rental (TVR) on Baldwin Avenue successfully operating since 2006 in the Rural Zoning District with permits valid until April 25, 2021. A Conditional Permit was approved for this operation by the County Council in 2006.

On March 12, 2019, the Maui Planning Commission agreed with the Director of Planning's opinion that the addition of Helaina DiMartino (daughter of permit holder Martin Herling) to CP 2000/0012 was a nonsubstantive amendment to permit terms and conditions. The Commission further approved the addition of Helaina DiMartino to SUP2 2000/0007. See **Attachment 1** as the letter memorializing this decision. The addition of Helaina DiMartino to the permits for CP 2000/0012 and SUP2 2000/0007 applied to the current permits shown in **Attachment 2**; however, this was not to be considered a permit transfer.

This addition of Ms. DiMartino to both the CP and SUP2 permits was recommended by the Director and agreed to by the Commission with the provisos that Martin Herling would continue in his primary role in operations of the Banyan Tree while his daughter learned the operations, and that the addition of his daughter to the permits was **NOT** considered to be a permit transfer.

Lawrence Carnicelli, Chair
and Members of the Maui Planning Commission
November 26, 2019
Page 2

Now that Martin Herling has decided to exit and sell the business to his daughter and have his daughter as primary owner and operator of the Banyan Tree, he hereby requests permit transfers of both the CP and the SUP2, thus requiring public hearings by the Planning Commission on both permits and adoption of a new Ordinance by the County Council for the Conditional Permit. By letter dated June 18, 2019, shown in **Attachment 3**, a request for this permit transfer and time extension for the Banyan Tree TVR was requested for Helaina DiMartino, the new owner of the property. Martin Herling gave his notarized authorization to Helaina De Martino to process these permit transfers.

Notices of public hearing for both of the permits were sent out on October 22, 2019, and no protests have been received by the Department.

No changes in the operations of the Banyan Tree Bed and Breakfast have been requested nor are anticipated by the Department. See **Attachment 4**, for a copy of the Memorandum dated March 12, 2019, for the addition of Helaina DiMartino to the permits which includes: Staff Report from January 10, 2012 for the 10-year time extension, outline of operations for the seven bedroom transient vacation rental, and Compliance Report on Conditions of Approval for both the CP and SUP2.

In addition to the permit transfer, Helaina DiMartino is requesting a time extension from the current expiration date of April 25, 2021 for both the CP and SUP2. As a new ordinance will be required with updated conditions, the Department is recommending a five-year time duration from the effective date of the new ordinance or December 31, 2024, whichever is later. This would give the community and Department sufficient time to review operations under Helaina DiMartino and she could request future time extensions pursuant to applicable County Code regulations.

As operations of the Banyan Tree Bed and Breakfast are anticipated to continue with no changes, the Department recommends transfer of the permits in the manner prescribed by the County Code to Helaina DiMartino with minor modifications to conditions

RECOMMENDATION

CONDITIONAL PERMIT

The Maui County Planning Department recommends that the Maui Planning Commission recommend approval of the Conditional Permit to the Maui County Council, subject to the following conditions:

1. That the Conditional Permit shall be valid for a period of five years from the effective date of this ordinance; provided, that an extension of this permit beyond this five year period may be granted pursuant to Section 19.40.090, Maui County Code.
2. That the Conditional Permit shall be nontransferable unless the Council approves the transfer by Ordinance.
3. That the Applicant and its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at his/her/their 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 ONE MILLION AND NO/100 DOLLARS (\$1,000,000) naming the County of Maui as an additional insured, insuring and defending the Applicant and County of Maui against any and all claims or demands for property damage, personal injury and/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 the Applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming County of Maui as an additional insured shall be submitted to the Department of Planning within 90 calendar days from the date of approval of this Conditional Permit. The proof of insurance and all subsequent certifications of insurance coverage shall be submitted directly by the insurance carrier to the Department and shall include the applicable TMK and permit numbers.
4. That the Helaina DiMartino shall operate the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so operate the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, Maui County Code.
5. That full compliance with all applicable governmental requirements shall be rendered.

6. That full compliance with the conditions of the State Land Use Commission Special Permit (SUP2 2000/0007) shall be observed.
7. That Helaina DiMartino shall execute a hold harmless agreement indemnifying the County should sight distance not be adequate to meet County standards for the subject property's driveway.

That Conditional Permit conditions will be enforced pursuant to the provisions of Chapter 19.530, §19.530.030 of the Maui County Code, as amended, 1980; and the *Rules for Administrative Procedures and Civil Fines for Violations of Titles 12, 14, 16, 19, and 20 of the Maui County Code*.

In consideration of the forgoing, the Maui County Planning Department recommends that the Maui Planning Commission adopt the Planning Department's Report and Recommendations prepared for the November 26, 2019, meeting as its Findings of Fact, Conclusions of Law, and Recommendation and to authorize the Director of Planning to transmit said Recommendation to the Maui County Council on behalf of the Maui Planning Commission.

LAND USE COMMISSION SPECIAL USE PERMIT

The Planning Department recommends approval of the Land Use Commission Special Permit (SUP2) transfer and time extension subject to the following conditions:

1. That the SUP2 shall be valid until **December 31, 2024**, or in accordance with the expiration date of the Conditional Permit whichever is later, subject to extension by the Planning Director upon a timely request for extension filed within 90 days prior to its expiration. The Director may forward the time extension request to the Commission for review and approval and may require a public hearing on the time extension by the Commission.
2. That the subject SUP2 shall not be transferred without the prior written approval of the Director. However, in the event that a contested case hearing preceded issuance of said SUP2, a public hearing shall be held by the Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.
3. That the Applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject SUP2 and shall procure at its own cost and expense, and shall

maintain during the entire period of this SUP2, a policy or policies of comprehensive liability insurance in the minimum amount of 1,000,000.00 naming the County of Maui and State of Hawaii as an additional insured, insuring and defending the applicant, County of Maui and State of Hawaii against any and all claims or demands for property damage, personal injury and/or death arising out of this 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 the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. Proof of a policy naming the County of Maui as an additional insured shall be submitted to the Department within 90 calendar days from the date of transmittal of the decision and order. The proof of insurance and all subsequent certifications of insurance coverage shall include the applicable Tax Map Key (TMK) and permit numbers.

4. That full compliance with all applicable governmental requirements shall be rendered.
5. That the applicant shall submit to the Planning Department two copies of a detailed report addressing its compliance with the conditions established with the subject SUP2 and CP. The compliance report shall be submitted to the Planning Department with the renewal of the subject SUP2 and CP.
6. That the property shall not be used as a venue for special events.
7. That the operation of the transient vacation rental complex shall be consistent with the character of the existing neighborhood.
8. That the uses on the premises shall create no impact greater than a typical residential home in the neighborhood.
9. That the occupancy policy applicable to the transient vacation rental units shall be consistent with Maui County and Federal standards related thereto.
10. That no exterior live amplified sound shall be permitted on the premises.

11. That the guests of the transient vacation rental facilities shall be required to limit the number of off-site visitors to the property, consistent with the goal of minimizing the impact of the use upon the neighborhood.
12. That the number of guest rooms on the property shall be restricted to a maximum of seven, with the understanding that no rooms for transient guests shall be contained in any other or future residential dwelling to be constructed on the premises.
13. That the “accessory dwelling” built on the subject property in 2008 shall be for personal use of the owner/lessor of the property.
14. That no portion of the “accessory dwelling” shall exceed 20 feet in height, regardless of the number of stories.
15. That the use of the “accessory dwelling” shall be limited to long-term residential use only and not less than 180 days per term.

The conditions of this Land Use Commission State Special Permit shall be enforced pursuant to §§205-12 and 205-13, Hawaii Revised Statutes.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department’s Report and Recommendation prepared for the November 26, 2019, meeting as its Findings of Fact, Conclusions of Law, and Decision and Order and to authorize the Director of Planning to transmit said written Decision and Order on behalf of the Planning Commission.

Attachments

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Kurt F. Wollenhaupt, Staff Planner (PDF)
Danny A. Dias, Acting Planning Program Administrator (PDF)
Brett Davis (PDF)
Project File

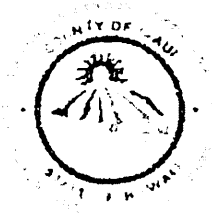
MCM:KFW:rma
K:\WP_DOCS\PLANNING\CP\2000\0012_BanyanTree\2019 Transfer and Time Extension\MPC Report
Recommendation Addition of Daughter.doc

ATTACHMENT 1

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



DEPARTMENT OF PLANNING
COUNTY OF MAUI
ONE MAIN PLAZA
2200 MAIN STREET, SUITE 315
WAILUKU, MAUI, HAWAII 96793
March 13, 2019

Mr. Martin Herling
3265 Baldwin Avenue
Makawao, Hawaii 96768

Dear Mr. Herling:

SUBJECT: ADDITION OF HELAINA DI MARTINO (DAUGHTER OF PERMIT HOLDER MARTIN HERLING) TO CONDITIONAL PERMIT (CP) AND LAND USE COMMISSION SPECIAL PERMIT (SUP2) FOR THE BANYAN TREE BED AND BREAKFAST, LOCATED AT 3265 BALDWIN AVENUE, MAKAWAO, ISLAND OF MAUI, HAWAII; TMK: 2-4-002:002 (CP 2000/0012) (SUP2 2000/0007)

The Maui Planning Commission (Commission) at its regularly scheduled meeting of March 12, 2019, agreed with the Director of Planning's decision that the addition of Helaina Di Martino (daughter of permit holder Martin Herling) to Conditional Permit (CP 2000/0012) was a nonsubstantive amendment to permit terms and conditions. The Commission further approved the addition of Helaina Di Martino to the State Land Use Commission Special Permit (SUP2 2000/0007).

Please note that CP 2000/0012 and SUP2 2000/0007 are valid until April 25, 2021, and subject to extension under the rules and conditions for each of these permits. It is essential to submit a timely extension request within 90 days of permit expiration.

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Kurt Wollenhaupt at kurt.wollenhaupt@mauicounty.gov or at (808) 270-1789.

Sincerely,

MICHELE MCLEAN, AICP
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
John Rapacz, Planning Program Administrator (PDF)
Kurt F. Wollenhaupt, Staff Planner (PDF)
Martin Herling, Applicant (PDF)
Project File

MCM:KFW:lk

K:\WP_DOCS\Planning\CP2000\0012_BanyanTree\Addition of Family Member to Permit\Daughter Addition Approval.docx

ATTACHMENT 2

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU McLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

January 18, 2012

CERTIFIED MAIL - #7010 3090 0000 4921 0064

Mr. Christopher L. Hart, ALSA
Chris Hart & Partners, Inc.
115 North Market Street
Wailuku, Hawaii 96793-1717

Dear Mr. Hart:

**SUBJECT: TIME EXTENSION OF THE CONDITIONAL PERMIT (CP) AND LAND
USE COMMISSION SPECIAL USE PERMIT (SUP) APPLICATIONS
FOR THE BANYAN TREE BED AND BREAKFAST, LOCATED AT
3265 BALDWIN AVENUE, MAKAWAO, ISLAND OF MAUI, HAWAII;
TMK: 2-4-002:002 (CP 2000/0012) (SUP2 2000/0007)**

CONDITIONAL PERMIT

Upon analysis of the subject request for a time extension of CP 2000/0012, the Department of Planning (Department) has made the following determinations:

- 1 The permit holder is in compliance with the conditions of approval for CP 2000/0012 granted by County Council Ordinance No. 3377, Bill No. 24 on April 25, 2006.
- 2 The permitted use has not been substantially changed and new uses have not been added that may result in significant impacts above what would result from the approved CP.
- 3 Agencies have not identified new matters of concern that require mitigation.
- 4 No protests were received from the property owners and lessees of record located within five hundred feet (500') of the parcel on which the conditional use is located. The notice of filing of the application for a time extension of the conditional use was mailed by the Applicant on September 23, 2011, with no protests received during the challenge period.
- 5 The criteria enumerated in Ordinance No. 3827 have been met, allowing the Director to approve a ten (10) year time extension of the CP for the continued operation of the Banyan Tree Bed and Breakfast.

Accordingly, the request for a time extension of the subject Conditional Permit (CP 2000/0012) is hereby granted and shall be valid until April 25, 2021.

LAND USE COMMISSION SPECIAL USE PERMIT (SUP)

At its regular meeting on January 10, 2012, the Maui Planning Commission (Commission) reviewed the request for a time extension for the operation of the Banyan Tree Bed and Breakfast and after due deliberation, and receipt of testimony and exhibits, approved a time extension of Land Use Commission SUP, SUP2 2000/0007, subject to the following Conditions of Approval:

STANDARD CONDITIONS

1. That the Land Use Commission SUP shall be valid until April 25, 2021, subject to extension by the Planning Director (Director) upon a timely request for extension filed at least ninety (90) days prior to its expiration. The Director may forward the time-extension request to the Commission for review and approval and may require a public hearing on the time extension by the Commission.
2. That the conditions of this Land Use Commission SUP shall be enforced, pursuant to Section 205-12 and 205-13, Hawaii Revised Statutes (HRS). Failure to comply with one (1) or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one (1) or more of the following: that the violation activity cease; that the violation development be removed; that a civil fine be paid not to exceed \$1,000.00 per violation; and that a civil fine not to exceed \$5,000.00 shall be issued if violation not cured within six (6) months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the Department within said thirty (30) days. Upon receipt of a request for a hearing, the Department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the Director or the director's designee in accordance with the provisions of Chapter 91, HRS, as amended.
3. That the subject Land Use Commission SUP shall not be transferred without the prior written approval of the Commission.
4. That the Applicant shall exercise reasonable due care as to third parties with respect to all areas affected by subject Land Use Commission SUP, and shall procure at its own cost and expense, and shall maintain during the entire period of this Land Use Commission SUP, a policy or policies of comprehensive liability

in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional insured, insuring and defending the County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this 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 the Applicant 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 this permit. A copy of the Certificate of Insurance naming County of Maui as an additional insured shall be submitted to the Department upon renewal of existing policies, and with the submittal of a time-extension request. (Continued documentation is required in the Compliance Report.)

5. That full compliance with all applicable governmental requirements shall be rendered.
6. That full compliance with the conditions of the CP as renewed (CP 2000/0012) shall be rendered.
7. That the Applicant shall submit to the Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Land Use Commission SUP. The Compliance Report shall be submitted to the Department with the renewal of the subject Land Use Commission SUP.

PROJECT SPECIFIC CONDITIONS

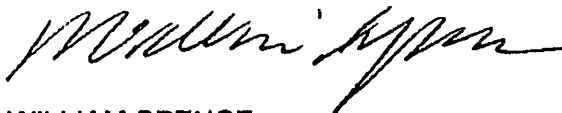
8. That the property shall not be used as a venue for special events.
9. That the operation of the transient vacation rental complex shall be consistent with the character of the existing neighborhood.
10. That the uses on the premises shall create no impact greater than a typical residential home in the Sunnyside neighborhood.
11. That the occupancy policy applicable to the transient vacation rental units shall be consistent with Maui County and Federal standards related thereto.
12. That no exterior live amplified sound shall be permitted on the premises.
13. That the guests of the transient vacation rental facilities shall be required to limit the number of off-site visitors to the property, consistent with the goal of minimizing the impact of the use upon the neighborhood.

14. That the number of guest rooms on the property shall be restricted to a maximum of seven (7), with the understanding that no rooms for transient guests shall be contained in any future residential dwelling to be constructed on the premises.
15. That the "accessory dwelling" built on the subject property in 2008 shall be for personal use of the owner/lessor of the property.
16. That no portion of the "accessory dwelling" shall exceed twenty feet (20') in height, regardless of the number of stories.
17. That the use of the "accessory dwelling" shall be limited to long-term residential use only and not less than ninety (90) days per term.

Further, the Commission adopted the Report and Recommendation prepared by the Department for the January 10, 2012, meeting as its Findings of Fact, Conclusions of Law, and Decision and Order. Parties to proceedings before the Commission may obtain Judicial Review of Decision and Orders issued by the Commission in the manner set forth in Chapter 91-14, HRS.

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Kurt Wollenhaupt at kurt.wollenhaupt@mauicounty.gov or at (808) 270-1789.

Sincerely, _



WILLIAM SPENCE
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Aaron H. Shinmoto, PE, Planning Program Administrator (PDF)
Kurt F. Wollenhaupt, Staff Planner (PDF)
Development Services Administration
Department of Water Supply
Department of Public Works
Department of Finance, Real Property Tax Division
Department of Fire & Public Safety
Martin Herling, Applicant
CZM File (SUP2)
Project File
General File

WRS:KFW:sa

K:\WP_DOCS\PLANNING\CP\2000\0012_BanyanTree\Time Extension Approval.doc

ORDINANCE NO. 3377

BILL NO. 24 (2006)

A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO
MARTY HERLING FOR A TRANSIENT VACATION RENTAL WITHIN THE
RU-1 RURAL ZONING DISTRICT FOR PROPERTY SITUATED AT
3265 BALDWIN AVENUE, HAMAKUAPOKO - MAKAWAO, 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 set forth in Section 2 of this ordinance, a Conditional Permit is hereby granted to Marty Herling for operation of the Banyan Tree Bed & Breakfast, a transient vacation rental located within the RU-1 Rural Zoning District. The site is identified for real property tax purposes by Tax Map Key Number: (2)2-4-002:002, comprising approximately 2.102 acres of land at 3265 Baldwin Avenue in Hamakuapoko - Makawao, Maui, Hawaii.

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

1. That the Conditional Permit shall be valid for a period of five (5) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this five-year period may be granted pursuant to Section 19.40.090, Maui County Code.
2. That the Conditional Permit shall be nontransferable unless the Council approves transfer by ordinance.
3. That Marty Herling shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at his 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 ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as a named additional insured, insuring and defending Marty Herling and County of Maui

against any and all claims or demands for property damage, personal injury, and/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 Marty Herling 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 this Conditional Permit. A copy of the certificate of insurance naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.

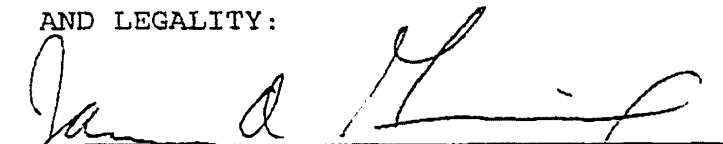
4. That Marty Herling shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080 of the Maui County Code.
5. That full compliance with all applicable governmental requirements shall be rendered.
6. That full compliance with the conditions of the Land Use Commission Special Use Permit (SUP2 2000/0007) shall be rendered.
7. That Marty Herling shall grade the banks on each side of the driveway to improve sight distance.
8. That Marty Herling shall repave the driveway upon completion of the grading of the banks.
9. That Marty Herling shall execute a hold harmless agreement indemnifying the County should final sight distance after grading of the banks not be adequate to meet County standards.

10. That Marty Herling shall install warning signage for vehicles traveling in an east and westbound direction along Baldwin Avenue.

11. That Marty Herling shall continue to meet the requirements for individual wastewater treatment systems of the State Department of Health.

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

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

(S:\CLERICAL\LJN\ORD\CP\CP Banyan Tree.wpd)

WE HEREBY CERTIFY that the foregoing BILL NO. 24 (2006)


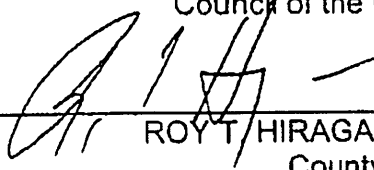
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 21st day of April, 2006, by the following vote:

G. Riki HOKAMA Chair	Robert CARROLL Vice-Chair	Michelle ANDERSON	Jo Anne JOHNSON	Daln P KANE	Dennis A. MATEO	Michael J MOLINA	Joseph PONTANILLA	Charma ne TAVARES
No	Aye	Aye	Aye	Excused	Aye	Aye	Aye	Aye

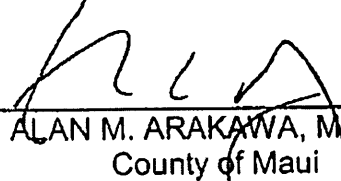
2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 21st day of April, 2006.

DATED AT WAILUKU, MAUI, HAWAII, this 21st day of April, 2006.

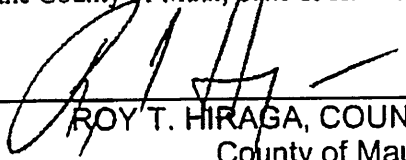
RECEIVED
APR 21 PM 3:11
OFFICE OF THE MAYOR


G. RIKI HOKAMA, CHAIR
Council of the County of Maui

ROY T. HIRAGA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 25th DAY OF April, 2006.


ALAN M. ARAKAWA, MAYOR
County of Maui
Keith A. Regan, Acting Mayor

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3377 of the County of Maui, State of Hawaii.


ROY T. HIRAGA, COUNTY CLERK
County of Maui

Passed First Reading on April 7, 2006.
Effective date of Ordinance April 25, 2006.

RECEIVED
APR 27 PM 1:59
THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3377, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

ATTACHMENT 3



**CHRIS
HART**
& PARTNERS, INC.

Landscape Architecture
City & Regional Planning

June 18, 2019

DEPT. OF PLANNING
COUNTY OF MAUI

JUN 19 2019

RECEIVED

Ms. Michele McLean, Director
Department of Planning
County of Maui
2200 Main Street
One Main Plaza, Suite 315
Wailuku, Maui, Hawaii 96793

Attention: Mr. Kurt Wollenhaupt, Staff Planner

SUBJECT: Time Extension and Transfer of Permits for the
Banyan Tree Bed & Breakfast
Located at 3265 Baldwin Avenue TMK: 2-4-002:002 Makawao,
Maui, Hawaii (CP 2000/0012, SUP2 2000/0007)

Dear Ms. McLean,

On behalf of the owner and Applicant, Ms. Helaina DiMartino, Chris Hart & Partners, Inc. has prepared this application to request the Extension and Transfer of (CP 2000/0012) and (SUP2 2000/0007), for continued use and operation of the Banyan Tree Bed and Breakfast at 3265 Baldwin Avenue, Makawao, Hawaii at TMK: (2) 2-4-002:002

Ms. Helaina DiMartino is the daughter of permit holder Mr. Martin Herling and at the March 12, 2019 Maui Planning Commission meeting Helaina's name was added to the CP 2000/0012, SUP2 2000/0007 permits which are valid until April 25, 2021. (See: Exhibit 1) Helaina has decided to pursue the extension and transfer of the permits and Mr. Martin Herling has provided a letter of authorization to pursue the transfer and extension of the above listed permits. (See: Exhibit 2)

Enclosed with this letter are the Planning Department Application forms, filing fee and an electronic version in PDF format on compact disc.

Ms. Michele McLean, Director
Time Extension Request for the Banyan Tree B&B
June 18, 2019
Page 2 of 2

Thank you for your cooperation. Please feel free to contact me or Mr. Brett Davis at bdavis@chpmaui.com with questions or comments on this time extension request.

Respectfully,

A handwritten signature in black ink, appearing to read "DSereda".

David Sereda
President

ENCLOSURES

CC: Ms. Helaina DiMartino (via email)
Mr. Kurt Wollenhaupt (via email)
Project File 19-030

DATE, 2019 6/17

Ms. Michele McLean, Director
Department of Planning
County of Maui
2200 Main Street
One Main Plaza, Suite 315
Wailuku, Maui, Hawaii 96793

AND

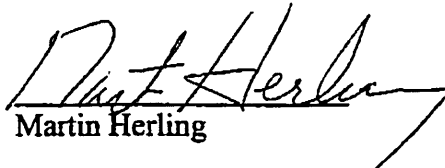
Other Governmental Officials

Re: Applications for the Extension and Transfer of Conditional Permit (CP 2000/0012) and Special Use Permit (SUP2 2000/0007), for continued use and operation of the Banyan Tree Bed and Breakfast at 3265 Baldwin Avenue, Makawao, Hawaii at TMK: (2) 2-4-002:002

Dear Ms. McLean and Other Government Officials:


As the previous owner of the property and permits (CP 2000/0012) and (SUP2 2000/0007), I hereby authorize Helaina DiMartino to sign as the Applicant for all necessary permits and approvals, including but not limited to the Extension and Transfer of (CP 2000/0012) and (SUP2 2000/0007), for continued use and operation of the Banyan Tree Bed and Breakfast at 3265 Baldwin Avenue, Makawao, Hawaii at TMK: (2) 2-4-002:002.

Very truly yours,


Martin Herling


Cc. Mr. David Sereda, President, Chris Hart & Partners, Inc.

Subscribed and sworn to before me this 17th day of June, 2019


Notary Public, Second Judicial Circuit
State of Hawaii Sandra Park
My commission expires: 2-22-21

State of Hawaii
County of Maui

NOTARY PUBLIC CERTIFICATION
Sandra Park Second Judicial Circuit
Doc. Description: Re: Applications for
the Extension and Transfer

No. of Pages: 1 Date of Doc. 6-17-19
 6-17-19
Notary Signature Date

LS

ATTACHMENT 4

MICHAEL P. VICTORINO
Mayor

MICHELE CHOUTEAU MCLEAN, AICP
Director

JORDAN E. HART
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

March 12, 2019

MEMORANDUM

TO: Keaka Robinson, Chair
and Members of the Maui Planning Commission

FROM: Michele McLean, AICP Planning Director

SUBJECT: ADDITION OF HELAINA DI MARTINO (DAUGHTER OF CURRENT PERMIT HOLDER) TO STATE LAND USE COMMISSION SPECIAL PERMIT (SUP2) AND CONDITIONAL PERMIT (CP) FOR THE BANYAN TREE TRANSIENT VACATION RENTAL (TVR) LOCATED AT 3265 BALDWIN AVENUE, MAKAWAO, ISLAND OF MAUI, HAWAII; TMK: (2) 2-4-002:002 (CP 2000/0012) (SUP2 2000/0007)

Mr. Martin Herling is the permit holder for Conditional Permit (CP) 2000/0012 and State Land Use Commission Special Permit (SUP2) 2000/0007 for the Banyan Tree Transient Vacation Rental. The Banyan Tree is a seven bedroom transient vacation rental on Baldwin Avenue successfully operating since 2006 in the Rural Zoning District.

By letter from Mr. Herling dated September 27, 2018 (See Exhibit #1), he is requesting adding his daughter, Helaina Di Martino to the permits as she will assist in managing the TVR operation and will be living on-site permanently. Mr. Herling stated that he will continue in his primary role in the operations of the Banyan Tree while his daughter learns the operation; therefore, this request to add his daughter to the permit is not considered to be a transfer of the permit but rather an addition to permit holders. At some future date, Mr. Herling will request a transfer of this permit to his daughter when he wishes to exit the business. At that time, Mr. Herling will need to go before the Maui Planning Commission and Maui Council to request a transfer of the two permits per conditions written into both of the permits.

The original Ordinance No. 3377 approved by the Council and signed by the Mayor with an effective date of April 25, 2006 along with the State Land Use Commission Special Permit approved by the Maui Planning Commission (Commission) were the two permits Mr. Herling needed to operate this rental property. See Exhibit #2 for Ordinance No. 3377.

In 2012, Mr. Herling was granted an extension to April 25, 2021, to continue to operate the Banyan Tree TVR. See Exhibit #3 for the Commission staff report dated January 10, 2012, regarding the request for a ten-year time extension. This staff report outlines details of the TVR operation. The approval letter in Exhibit #4 grants an extension until 2021 subject to the original conditions of Ordinance No. 3377 and SUP2 2000/0007.

Keaka Robinson, Chair
and Members of the Maui Planning Commission
March 12, 2019
Page 2

This addition of Helaina Di Martino to the conditional permit is considered by the Director of Planning to be a non-substantive amendment to conditional permit terms and conditions. Maui County Code Section 19.40.080 D states: *"The planning director may approve amendments to the conditional permit if the amendments are not substantive and do not result in significant impacts above what would result for the approved conditional permit. Before approving any such amendments, the planning director shall notify the respective planning commission of the proposed non-substantive amendments. The commission may review the proposed non-substantive amendments and take action or waive review."*

In regards to the matter of including Ms. Di Martino as a permit holder to the SUP2, the Department requests the Commission to consider this request as an addition to the named permit holders for SUP2 2000/0007.

Mr. Herling recognizes that he will need to request a time extension in 2021 and anticipates that at that time, he will also request a transfer of the permit to his daughter and will then go before the Commission and Council for the full transfer to his daughter.

RECOMMENDATION

The Department recommends waiving review of this non-substantive amendment to add Helaina Di Martino to CP 2000/0012 and to act to add Ms. Helaina Di Martino to SUP2 2000/0007.

Attachments

xc Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Kurt F. Wollenhaupt, Staff Planner (PDF)
John Rapacz (PDF) Planning Program Administrator
Project File

MCM:KFW

K:\WP_DOCS\Planning\CP\2000\0012_BanyanTree\Addition of Family Member to Permit\MPC Report
Recommendation Addition of Daughter.doc



Banyan Tree
H O U S E

January 2, 2019

Michele Chouteau Mclean.

Planning Director County of Maui

2200 Main Street

Wailuku HI 96793

Dear Michele,

I have a Vacation Rental SUP2 2000/0007, Banyan Tree at 3265 Baldwin Ave Makawao HI 96768 I am requesting adding my daughter's name Helaina Di Martino to the permit She resides on the property along with myself and shares in managing the property

Thank you for your consideration

Mahalo Martin Herling 808.572.9021

Martin Herling owner



3265 Baldwin Avenue
Makawao, Hawaii 96768
Tel: (808) 572-9021
Tel/Fax: (808) 573-2842

EXHIBIT #1

ORDINANCE NO. 3377

BILL NO. 24 (2006)

A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO
MARTY HERLING FOR A TRANSIENT VACATION RENTAL WITHIN THE
RU-1 RURAL ZONING DISTRICT FOR PROPERTY SITUATED AT
3265 BALDWIN AVENUE, HAMAKUAPOKO - MAKAWAO, 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 set forth in Section 2 of this ordinance, a Conditional Permit is hereby granted to Marty Herling for operation of the Banyan Tree Bed & Breakfast, a transient vacation rental located within the RU-1 Rural Zoning District. The site is identified for real property tax purposes by Tax Map Key Number: (2)2-4-002:002, comprising approximately 2.102 acres of land at 3265 Baldwin Avenue in Hamakuapoko - Makawao, Maui, Hawaii.

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

1. That the Conditional Permit shall be valid for a period of five (5) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this five-year period may be granted pursuant to Section 19.40.090, Maui County Code.
2. That the Conditional Permit shall be nontransferable unless the Council approves transfer by ordinance.
3. That Marty Herling shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at his 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 ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as a named additional insured, insuring and defending Marty Herling and County of Maui

against any and all claims or demands for property damage, personal injury, and/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 Marty Herling 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 this Conditional Permit. A copy of the certificate of insurance naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.

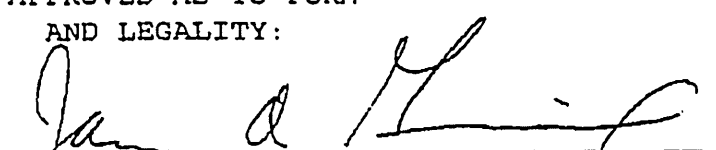
4. That Marty Herling shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080 of the Maui County Code.
5. That full compliance with all applicable governmental requirements shall be rendered.
6. That full compliance with the conditions of the Land Use Commission Special Use Permit (SUP2 2000/0007) shall be rendered.
7. That Marty Herling shall grade the banks on each side of the driveway to improve sight distance.
8. That Marty Herling shall repave the driveway upon completion of the grading of the banks.
9. That Marty Herling shall execute a hold harmless agreement indemnifying the County should final sight distance after grading of the banks not be adequate to meet County standards.

10. That Marty Herling shall install warning signage for vehicles traveling in an east and westbound direction along Baldwin Avenue.

11. That Marty Herling shall continue to meet the requirements for individual wastewater treatment systems of the State Department of Health.

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

APPROVED AS TO FORM
AND LEGALITY:



JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

(S:\CLERICAL\LJN\ORD\CP\CP Banyan Tree.wpd)

WE HEREBY CERTIFY that the foregoing BILL NO. 24 (2006)


1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 21st day of April, 2006, by the following vote:

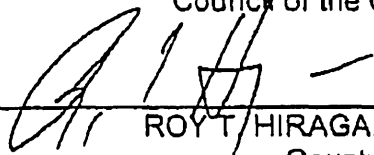
G. RIKI HOKAMA Chair	Robert CARROLL Vice-Chair	Michele ANDERSON	Jo Anne JOHNSON	Dain P KANE	Dennis A. MATEO	Michael J MOLINA	Joseph PONTANILLA	Charmaine TAVARES
No	Aye	Aye	Aye	Excused	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 21st day of April, 2006.


DATED AT WAILUKU, MAUI, HAWAII, this 21st day of April, 2006.

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2006 APR 21 PM 3:11
OFFICE OF THE MAYOR

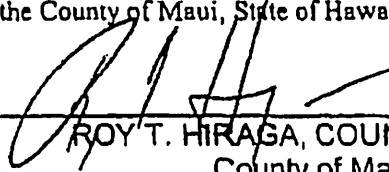

G. RIKI HOKAMA, CHAIR
Council of the County of Maui


ROY T. HIRAGA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 25th DAY OF April, 2006.


ALAN M. ARAKAWA, MAYOR
County of Maui
Keith A. Regan, Acting Mayor

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3377 of the County of Maui, State of Hawaii.


ROY T. HIRAGA, COUNTY CLERK
County of Maui

Passed First Reading on April 7, 2006.
Effective date of Ordinance April 25, 2006.

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THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3377, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter Of The Application Of

**MARTY HERLING FOR A TRANSIENT
VACATION RENTAL KNOWN AS BANYAN
TREE BED AND BREAKFAST**

To Obtain a Ten-Year Time Extension of a Land
Use Commission Special Use Permit to Operate
the Banyan Tree Bed and Breakfast, in the
State Rural District on 2.10 Acres at 3265
Baldwin Avenue, TMK (2) 2-4-002:002,
Hamakuapoko-Makawao, Maui, Hawaii

DOCKET NO. SUP2 2000/0007

MARTY HERLING
(Applicant)

**Christopher L. Hart and
Brett Davis of
Chris Hart & Partners**
(Consultant)

(KFW)

**MAUI PLANNING DEPARTMENT'S REPORT AND RECOMMENDATION
TO THE MAUI PLANNING COMMISSION
January 10, 2012 MEETING**

**DEPARTMENT OF PLANNING
COUNTY OF MAUI
250 S. HIGH STREET
WAILUKU, MAUI, HI. 96793**

Land Use Commission Special Use Permit Time Extension
K:\WP_DOCS\PLANNING\CP2000\0012_BANYANTREE\MP\REPORT-RECOMMENDATION.DOC

EXHIBIT #3

BEFORE THE MAUI PLANNING COMMISSION

COUNTY OF MAUI

STATE OF HAWAII

In The Matter Of The Application Of

**MARTY HERLING FOR A TRANSIENT
VACATION RENTAL KNOWN AS BANYAN
TREE BED AND BREAKFAST**

To Obtain a Ten-Year Time Extension of a Land Use Commission Special Use Permit to Operate the Banyan Tree Bed and Breakfast, in the State Rural District on 2.10 Acres at 3265 Baldwin Avenue, TMK (2) 2-4-002:002, Hamakuapoko-Makawao, Maui, Hawaii

DOCKET NO. SUP2 2000/0007

MARTY HERLING
(Applicant)

**Christopher L. Hart and
Brett Davis of
Chris Hart & Partners**
(Consultant)

(KFW)

THE APPLICATIONS

This matter arises from applications for a time extension of a Land Use Commission Special Use Permit (SUP2) to operate the Banyan Tree Bed and Breakfast in the State Rural District. The Applicant also submitted a time extension on the associated Conditional Permit (CP) for the Banyan Tree Bed and Breakfast operation in the County Rural District which may be handled administratively under the new rules for conditional permit renewal. The SUP2 and CP time extension requests were filed on January 25, 2011, pursuant to Chapters 19.40 and 19.510, Maui County Code, 1980 as amended, and the Land Use Commission Rules by Mr. Christopher Hart on behalf of Mr. Marty Herling, ("Applicant"), on 2.10 acres of land situated at 3256 Baldwin Avenue, Makawao, Island and County of Maui, identified as Maui Tax Map Key No. (2) 2-4-002:002 ("Property"). (See Exhibits #1 and #2 for location details of the subject property.)

PURPOSE OF THE APPLICATIONS

The Applicant is requesting a ten (10) year time extension of the Conditional Permit and Land Use Commission Special Use Permit to operate a seven (7) bedroom transient vacation rental within the State and County Rural Districts. (See Exhibit #3 for a pictorial view of the transient vacation rental property.)

APPLICABLE REGULATIONS

LAND USE COMMISSION SPECIAL USE PERMIT

Pursuant to Section 205-6 Special permit, Hawaii Revised Statutes, the county planning commission may permit certain unusual and reasonable uses within agricultural and rural districts other than those for which the district is classified. Special permits for land the area of which is greater than fifteen acres shall be subject to approval by the land use commission.

Standards for reviewing a Land Use Commission Special Use Permit are found under Title 15 Department of Business, Economic Development, and Tourism; Subtitle 3 State Land Use Commission, Chapter 15 Land Use Commission Rules, Subchapter 12 Special Permits, § 15-15-95 of the Hawaii Administrative Rules.

Certain "unusual and reasonable" uses within agricultural and rural districts other than those for which the district is classified may be permitted. The following guidelines are established in determining an "unusual and reasonable use":

- (1) The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the Land Use Commission.
- (2) The desired use would not adversely affect surrounding property;
- (3) The use would not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection;
- (4) Unusual conditions, trends and needs have arisen since the district boundaries and rules were established;
- (5) The land upon which the proposed use is sought is unsuited for the uses permitted within the district.

The county planning commission may impose such protective conditions as it deems necessary in the issuance of a special use permit. The county planning commission shall establish, among other conditions, a reasonable time limit suited to establishing the particular use, and if appropriate, a time limit for the duration of the particular use, which shall be a condition of the special permit. If the permitted use is not substantially established to the satisfaction of the county planning commission within the specified time, it may revoke the permit. The county planning commission, with the concurrence of the commission, may extend the time limit if it deems that circumstances warrant the granting of the extension.

CONDITIONAL PERMIT

Conditional permits are reviewed pursuant to Title 19, Zoning, Chapter 19.40 Conditional Permits; Maui County Code, 1980, as amended. The intent of the conditional permit is to provide the opportunity to consider establishing uses not specifically permitted within a given use zone where the proposed use is similar, related or compatible to those permitted uses and which has some special impact or uniqueness such that its effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location.

Upon finding that reasons justifying granting of a conditional permit exist, and that the proposed use would not be significantly detrimental to the public interest, convenience and welfare, and will be in harmony with the area in which it is to be located; issuance of a conditional permit may be recommended, subject to such terms and conditions and for such period of time as the facts may warrant.

Should the commission determine that the permit requested is for a use which is substantially different from those uses permitted in the use zone, the commission shall recommend

denial of the request and may instruct the applicant to seek a change in zoning should the facts warrant such an application.

Every conditional permit shall be conditioned upon the proposed development fully complying with all requirements of title 19 and other applicable governmental requirements.

Section 19.40.090 – Extensions:

Conditional permits shall not be extended unless the terms of the initial issuance explicitly provide for same. In any case, extensions must be applied for no later than ninety days prior to expiration. Amended procedures for extensions to conditional permits were passed by the County Council. This application used the new rules for a CP extension having no substantive amendments by notifying all property owners within 500 feet of the project. No objections were received by the Department or Applicant and no changes have been proposed to the CP; therefore, the Planning Director may grant a time extension for this CP, subject to Planning Commission approval of the SUP2.

PROCEDURAL MATTERS

1. Ordinance No. 3377, effective April 25, 2006, granted a Conditional Permit to Marty Herling to operate the Banyan Tree Bed & Breakfast, a seven (7) bedroom transient vacation rental. The permit was valid for five (5) years. (See Exhibit #4.)
2. On August 22, 2006, the Maui Planning Commission approved a State Land Use Commission Special Use Permit (SUP2 2000/0007) for the operation of the Banyan Tree Bed & Breakfast. (See Exhibit #5.)
3. On January 25, 2011, the Applicant filed with the Department of Planning a timely request for time extension of the Conditional Permit and the Land Use Commission Special Use Permit along with a Compliance Report for the subject property. (See Exhibit #6.)
4. The Department of Planning determined, in accordance with 19.40.090, Maui County Code, 1980 as amended, that there has been no substantial change in the factors surrounding the original applications, thus the Applicant was able to use the modified CP procedure for a time extension, and on September 23, 2011, mailed notices of the proposed time extension to properties within 500 feet of the B&B. No notices of objection to the time extension were received by either the Applicant or the Department, enabling the Planning Director to extend the CP for a period of ten (10) years, subject to approval of the SUP2 by the Commission
5. The subject time extension request does not involve an action that triggers compliance to Chapter 343, Hawaii Revised Statutes, relating to Environmental Impact Statements.

GENERAL DESCRIPTION

Description of the Property

1. The Property which is approximately 2.10 acres is located at 3265 Baldwin Avenue at Maui Tax Map Key 2-4-002:002, Makawao, Maui, Hawaii.
2. Land Use Designations –
 - a. State Land Use District – Rural District

- b. Makawao-Pukalani-Kula Community Plan – Rural
 - c. County Zoning – RU-1 District
 - d. Other – Not within the Special Management Area
3. Surrounding Uses –
- North – Residential
 - East – Cemetery and Turner Residential Property
 - South – Baldwin Avenue, Maui Land & Pineapple Fields
 - West – Baldwin Avenue, Maui Land & Pineapple Fields
4. The subject parcel is developed with two principal dwellings used for the 7-bedroom transient vacation rental and a newly built "accessory dwelling" permitted under the Planning Commission approval of the SUP2 in 2006. Condition #15 of the SUP2 states "That any future residential dwelling to be built on the subject property shall be for the personal use of the owner/lessor of the property..." The newly built "accessory dwelling" received a final building permit since approval of the SUP2 in 2006. The property also includes a swimming pool, parking area, and gardens. The main residence known as the Banyan Tree was constructed in 1926 by the Maui Agricultural Company and the Pala Sugar Company which merged in 1948 with HC&S. The other dwelling, known as the "servant's cottage" was constructed in 1938.

Existing Services

1. **Water** – The subject property is served by the Department of Water Supply's Makawao-Haiku system that is comprised of surface run-off collected from the windward slopes of Haleakala. An 8-inch water distribution line runs along Baldwin Avenue. A 1-inch service lateral extends onto the property. A 1-inch diameter serves the property.
2. **Sewers** – The property is served by an individual wastewater septic system designed to meet State Department of Health Standards. There are no cesspools in operation on the property.
3. **Drainage** – The subject property is located within Zone C or areas of minimal flooding and is not within a floodway. Storm water runoff flows into a system of grassed swales into one of the many gulches in the area.
4. **Roadways, Curbs, Gutters and Sidewalks** – Access to the project site is from Baldwin Avenue, a two-lane rural road that serves the region from Paia to Makawao. There are no curbs, gutters, or sidewalks along this portion of Baldwin Avenue.
5. **Electrical and Telephone** – Overhead electrical and telephone service is available to the site.
6. **Parks** – There are several recreational facilities in the Upcountry region that provide recreational opportunities to the area, included the Eddie Tam Memorial Gym and Park Complex.
7. **Schools** – The Makawao-Pukalani-Kula region is served by both public and private schools, which provide education from pre-school through high school. Public Schools in the region include Pukalani Elementary School, Makawao Elementary School, Kula Elementary School, Kalama Intermediate School, and King Kekaulike High School.

8. **Solid Waste** – The nearest landfill site is the Central Maui Sanitary Landfill in Puunene
9. **Public Services** - Fire protection is from the Makawao Fire Station on Makawao Avenue and the Kula Fire Station along Kula Highway.

The Makawao Library provides service and is located along Makawao Avenue.

The Maui Police Department is headquartered in Wailuku. The nearest operating Police Substation is located in Makawao at the Eddie Tam Gymnasium.

The nearest hospital is Maui Memorial Medical Center located in Wailuku.

DESCRIPTION OF THE SUBJECT REQUEST

At this time the applicant is requesting a ten-year time extension of the Conditional Permit and the Land Use Commission Special Use Permit, in order to continue operations of a seven bedroom transient vacation rental in the Rural District.

REVIEWING AGENCIES

The request for time extensions required a compliance report that indicates original conditions of the applications for the B&B and SUP2 have been complied with.

ANALYSIS

A compliance report addressing the conditions of approval for both the SUP2 and the CP is attached as *Exhibit #6*. Conditions of approval have been complied with. No requests for service or complaints have been noted during the past five-year operation of the property.

CONCLUSIONS OF LAW

The ongoing operation of a transient vacation rental is an "unusual and reasonable" use within the State Rural District and based on the Planning Department's analysis, the existing project complies with the applicable standards for a Land Use Commission Special Use Permit time extension. Further, the existing use does not adversely affect the surrounding property, and does not unreasonably burden public agencies to provide roads and streets, sewers, water, drainage and school improvements, and police and fire protection. Adjacent neighbors have been notified of the pending time extension application and no negative comments have been received. No requests for service are outstanding.

ALTERNATIVES

LAND USE COMMISSION SPECIAL USE PERMIT

1. **Approval With No Conditions.** The Commission may take action to approve the amendments to the Land Use Commission Special Use Permit without imposing any conditions.
2. **Approval With Conditions.** The Commission may take action to approve the amendments to the Land Use Commission Special Use Permit and may also recommend conditions.

3. Deferral. The Commission may defer action to another meeting date in order to obtain additional information that will assist in their deliberation on the requests.
4. Denial. The Commission may take action to deny the amendments to the Land Use Commission Special Use Permit.

RECOMMENDATION

LAND USE COMMISSION SPECIAL USE PERMIT

The Planning Department recommends approval of the Land Use Commission Special Use Permit time extension subject to the following conditions:

STANDARD CONDITIONS

1. That the Land Use Commission Special Use Permit (SUP2) shall be valid until **April 25, 2021**, subject to extension by the Planning Director upon a timely request for extension filed at least ninety (90) days prior to its expiration. The Planning Director may forward the time-extension request to the Commission for review and approval and may require a public hearing on the time extension by the Commission.
2. That the conditions of this SUP2 shall be enforced pursuant to Section 205-12 and 205-13, Hawaii Revised Statutes (HRS). Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violation activity cease; that the violation development be removed; that a civil fine be paid not to exceed \$1,000 per violation; and that a civil fine not to exceed \$5,000 shall be issued if violation not cured within six (6) months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the Department of Planning (Department) within said thirty (30) days. Upon receipt of a request for a hearing, the Department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the Planning Director or the director's designee in accordance with the provisions of Chapter 91, HRS, as amended.
3. That the subject Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Maui Planning Commission.
4. That the Applicant shall exercise reasonable due care as to third parties with respect to all areas affected by subject Land Use Commission Special Use Permit, and shall procure at its own cost and expense, and shall maintain during the entire period of this Land Use Commission Special Use Permit, a policy or policies of comprehensive liability in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional insured, insuring and defending the County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this 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 the Applicant 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 this permit. A copy of the Certificate of Insurance naming County of Maui as an additional insured shall be submitted to the Department upon renewal of existing policies, and with the submittal of a time-extension request. (Continued documentation is required in the Compliance Report.)

5. That full compliance with all applicable governmental requirements shall be rendered.
6. That full compliance with the conditions of the Conditional Permit as renewed (CP 2000/0012) shall be rendered.
7. That the applicant shall submit to the Planning Department five copies of a detailed report addressing its compliance with the conditions established with the subject Land Use Commission Special Use Permit. The compliance report shall be submitted to the Planning Department with the renewal of the subject Land Use Commission Special Use Permit.

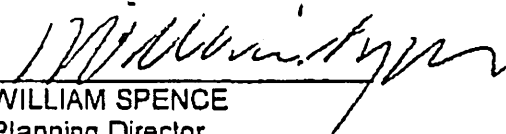
PROJECT SPECIFIC CONDITIONS

8. That the property shall not be used as a venue for special events.
9. That the operation of the transient vacation rental complex shall be consistent with the character of the existing neighborhood.
10. That the uses on the premises shall create no impact greater than a typical residential home in the Sunnyside neighborhood.
11. That the occupancy policy applicable to the transient vacation rental units shall be consistent with Maui County and Federal standards related thereto.
12. That no exterior live amplified sound shall be permitted on the premises.
13. That the guests of the transient vacation rental facilities shall be required to limit the number of off-site visitors to the property, consistent with the goal of minimizing the impact of the use upon the neighborhood.
14. That the number of guest rooms on the property shall be restricted to a maximum of seven (7), with the understanding that no rooms for transient guests shall be contained in any future residential dwelling to be constructed on the premises.
15. That the "accessory dwelling" built on the subject property in 2008 shall be for personal use of the owner/lessor of the property.
16. That no portion of the "accessory dwelling" shall exceed 20 feet in height, regardless of the number of stories.
17. That the use of the "accessory dwelling" shall be limited to long-term residential use only and not less than 90 days per term.

In consideration of the foregoing, the Planning Department recommends that the Maui Planning Commission adopt the Planning Department's Report and Recommendation prepared for the January 10, 2012, meeting as its Findings of Fact, Conclusions of Law, and Decision and Order

and to authorize the Director of Planning to transmit said written Decision and Order on behalf of the Planning Commission.

APPROVED:


WILLIAM SPENCE
Planning Director

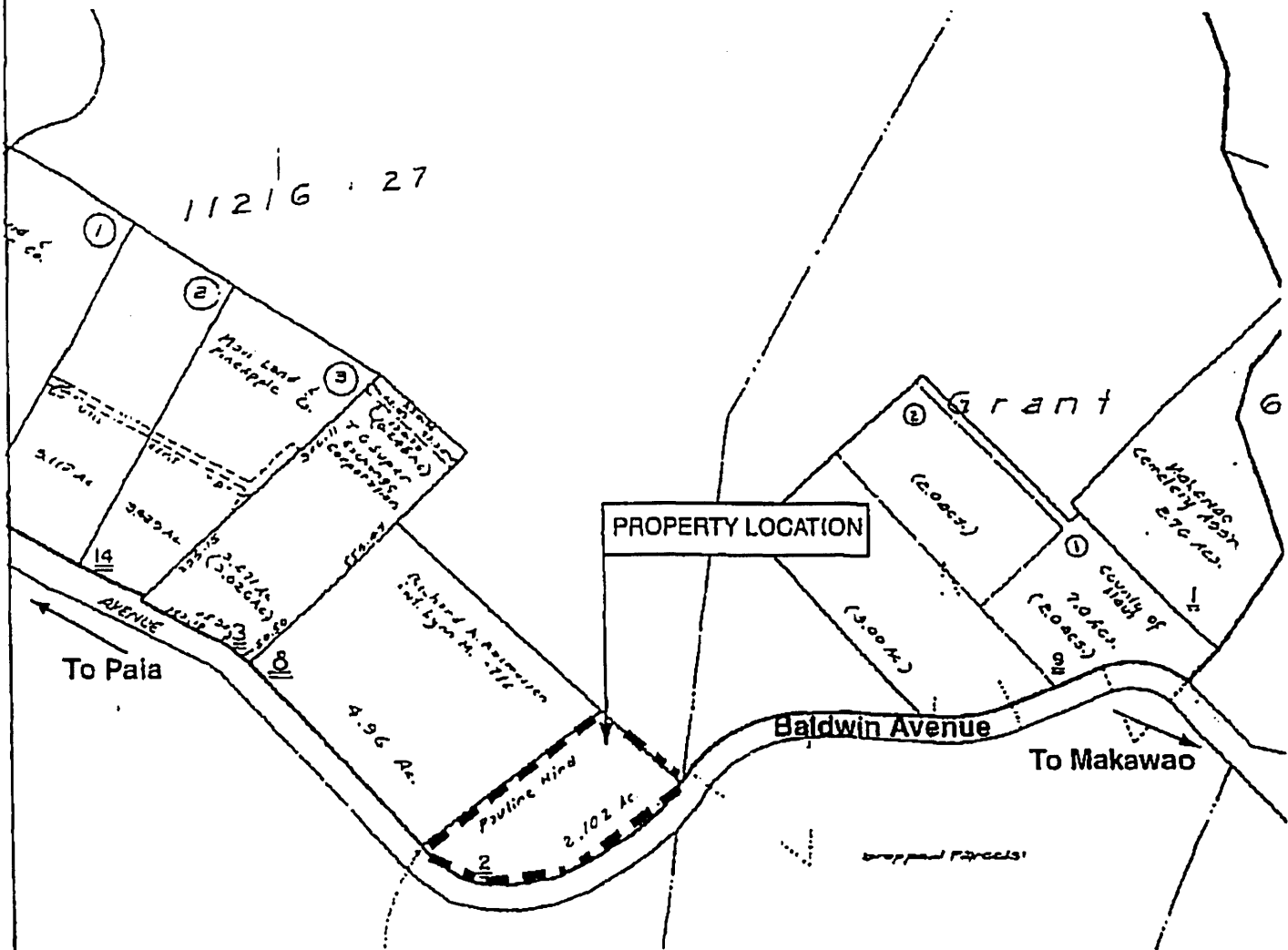
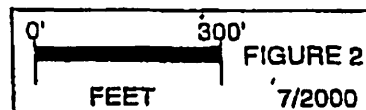


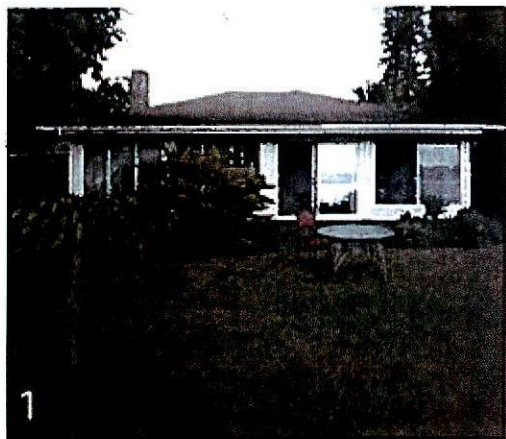
Exhibit 2



TMK MAP
BANYAN TREE BED &
BREAKFAST

CHRIS
HART
& PARTNERS

TMK: (2) 2-4-002:002



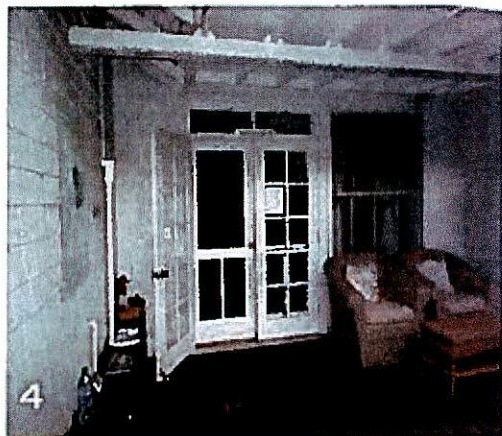
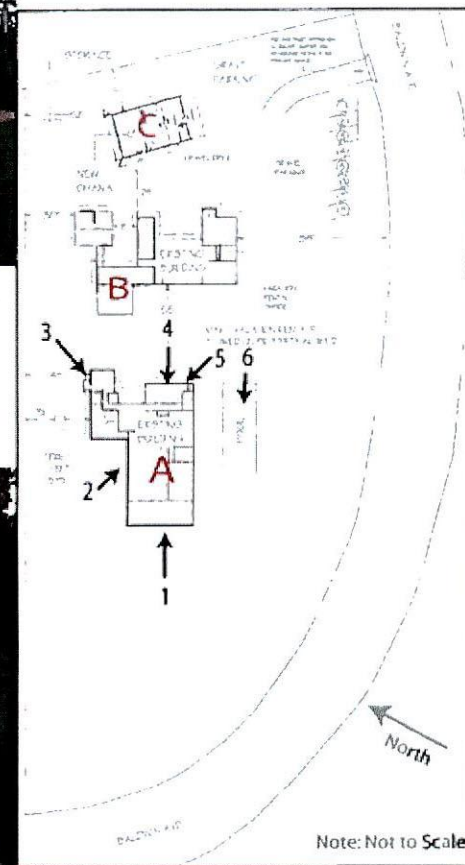
View of screened porch in Building A



Side view of bathroom addition to Building A



View of "Plumeria" and "Banyan" Suites in Building A



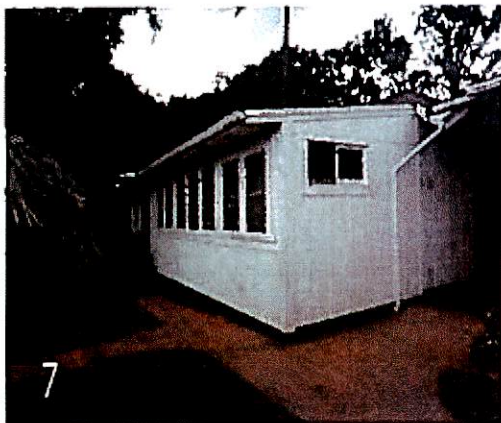
Side Entrance to Building A



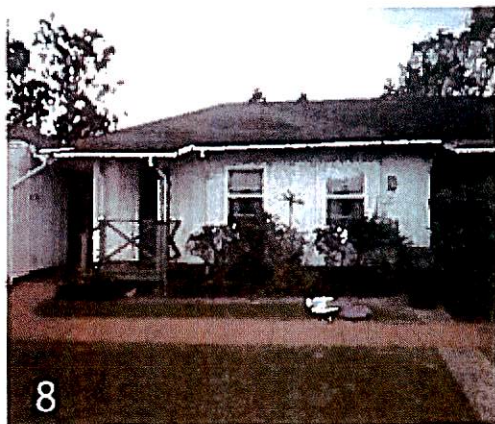
View of "Palm Suite" in Building A



Banyan Tree Pool adjacent to Building A



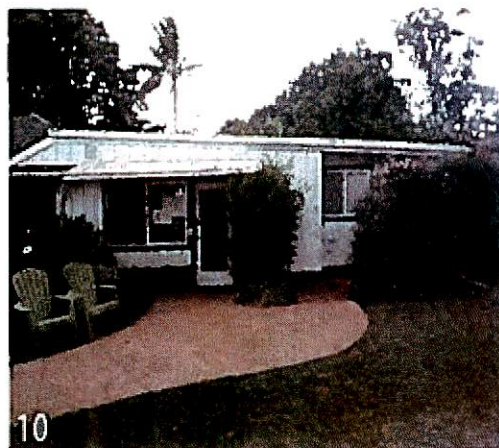
7
View of "Sue's Cottage"
Rental Unit in Building B



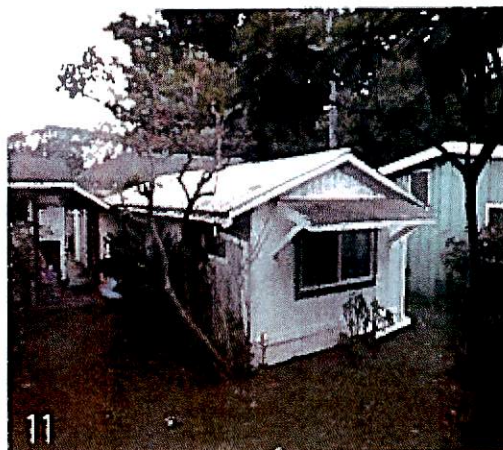
8
View of "Gardenia Cottage"
Rental Unit in Building B



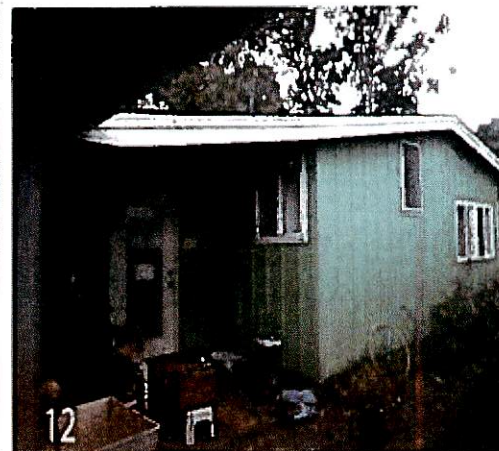
9
View of "Hibiscus Cottage"
Rental Unit in Building B



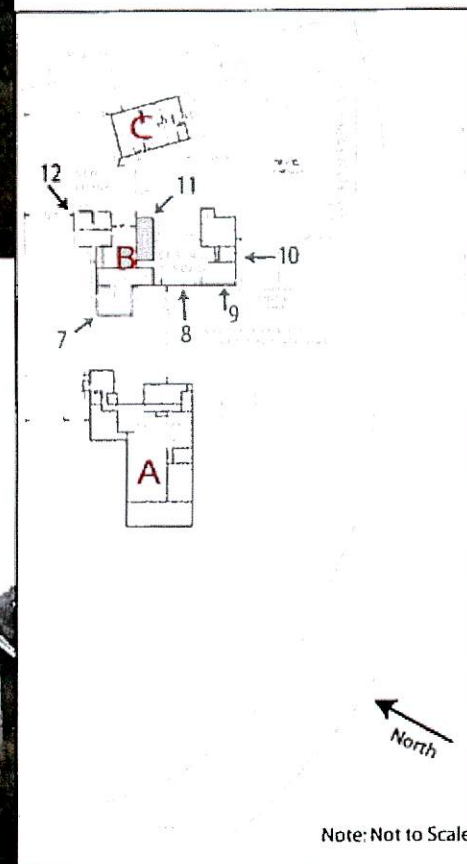
10
View of Rental Office
in Building B



11
View of Building B

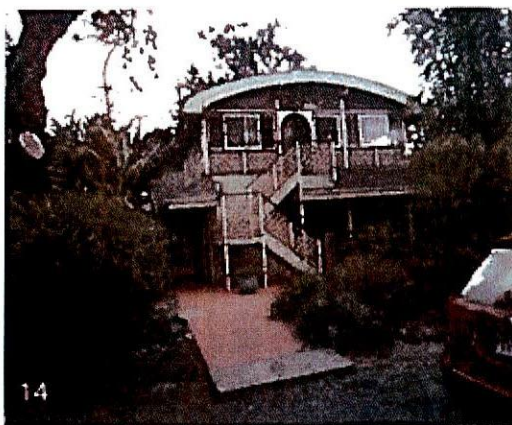


12
View of Building B





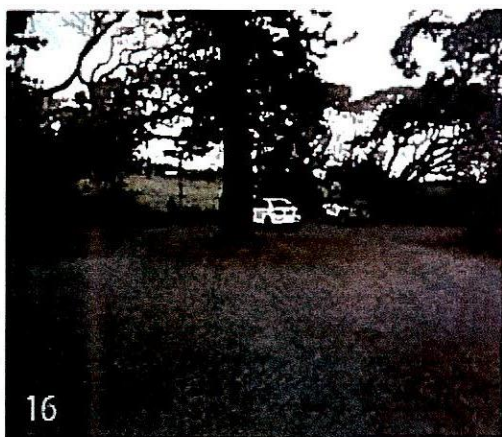
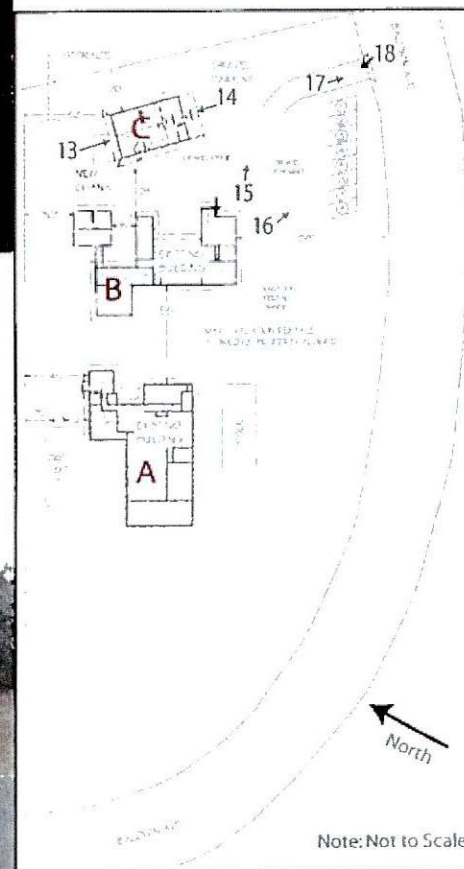
13
Rear view of Building C
"Accessory Dwelling"



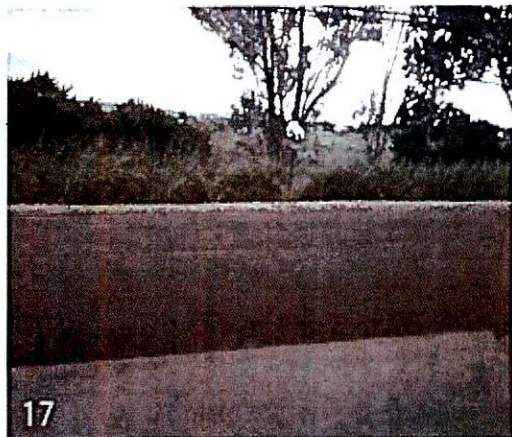
14
Front view of Building C
"Accessory Dwelling"



15
View of gravel circulation area
with parking



16
View of main gravel parking lot



17
View of Baldwin Ave. from
entrance driveway



18
View of entrance driveway
from Baldwin Ave.

CP 2006/0012

ORDINANCE NO. 3377
 Effective Date: April 25, 2006

RECEIVED

ORDINANCE NO. 3377

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OFFICE OF THE MAYOR

BILL NO. 24

(2006)

 DEPT OF PLANNING
 COUNTY OF MAUI
 RECEIVED

A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO
 MARTY HERLING FOR A TRANSIENT VACATION RENTAL WITHIN THE
 RU-1 RURAL ZONING DISTRICT FOR PROPERTY SITUATED AT
 3265 BALDWIN AVENUE, HAMAKUAPOKO - MAKAWAO, MAUI, HAWAII

Comp C	
Finance	
Hsg&HC	
Liquor	
Parks&R	
Personnel	
Planning	
Police	
Protects	
Public W	
Transplan	
Water S	
Mgmt	
Mayor	

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 set forth in Section 2 of this ordinance, a Conditional Permit is hereby granted to Marty Herling for operation of the Banyan Tree Bed & Breakfast, a transient vacation rental located within the RU-1 Rural Zoning District. The site is identified for real property tax purposes by Tax Map Key Number: (2)2-4-002:002, comprising approximately 2.102 acres of land at 3265 Baldwin Avenue in Hamakuapoko - Makawao, Maui, Hawaii.

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

1. That the Conditional Permit shall be valid for a period of five (5) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this five-year period may be granted pursuant to Section 19.40.090, Maui County Code.
2. That the Conditional Permit shall be nontransferable unless the Council approves transfer by ordinance.
3. That Marty Herling shall exercise reasonable due care as to third parties with respect to all areas affected by subject Conditional Permit and shall procure at his 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 ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as a named additional insured, insuring and defending Marty Herling and County of Maui

EXHIBIT 3

Exhibit 4

against any and all claims or demands for property damage, personal injury, and/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 Marty Herling 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 this Conditional Permit. A copy of the certificate of insurance naming County of Maui as a named additional insured shall be submitted to the Department of Planning within ninety (90) calendar days from the effective date of this ordinance.

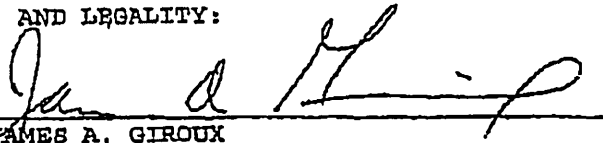
4. That Marty Herling shall develop the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to so develop the property may result in the revocation of the Conditional Permit pursuant to Section 19.40.080, of the Maui County Code.
5. That full compliance with all applicable governmental requirements shall be rendered.
6. That full compliance with the conditions of the Land Use Commission Special Use Permit (SUP2 2000/0007) shall be rendered.
7. That Marty Herling shall grade the banks on each side of the driveway to improve sight distance.
8. That Marty Herling shall repave the driveway upon completion of the grading of the banks.
9. That Marty Herling shall execute a hold harmless agreement indemnifying the County should final sight distance after grading of the banks not be adequate to meet County standards.

10. That Marty Herling shall install warning signage for vehicles traveling in an east and westbound direction along Baldwin Avenue.

11. That Marty Herling shall continue to meet the requirements for individual wastewater treatment systems of the State Department of Health.

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

APPROVED AS TO FORM
AND LEGALITY:


JAMES A. GIROUX
Deputy Corporation Counsel
County of Maui

(S:\CLERICAL\LVH\ORD\CP\CP Bayesian Tree.wpd)

WE HEREBY CERTIFY that the foregoing BILL NO. 24 (2006)


1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 21st day of April, 2006, by the following vote:

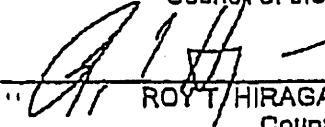
G. RIKI HOKAMA Chair	Robert CARROLL Vice-Chair	Michelle ANDERSON	JoAnne JOHNSON	Dan P. KANE	Dennis A. MATED	Michael J. MOLINA	Joseph PONTANILLA	Chaminda TAVARES
No	Aye	Aye	Aye	Excused	Aye	Aye	Aye	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 21st day of April, 2006.


DATED AT WAILUKU, MAUI, HAWAII, this 21st day of April, 2006.

RECEIVED
APR 21 PM 3:11
OFFICE OF THE MAYOR



G. RIKI HOKAMA, CHAIR
Council of the County of Maui


ROY T. HIRAGA, COUNTY CLERK
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 25th DAY OF April, 2006.


ALAN M. ARAKAWA, MAYOR
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3377 of the County of Maui, State of Hawaii.


ROY T. HIRAGA, COUNTY CLERK
County of Maui

Passed First Reading on April 7, 2006.
Effective date of Ordinance April 25, 2006.

RECEIVED
APR 27 PM 1:59
OFFICE OF THE
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3377, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

ALAN M. ARAKAWA
Mayor

MICHAEL W. FOLEY
Director

DON COUCH
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

September 5, 2006

CERTIFIED MAIL - RETURN RECEIPT REQUESTED
#7005 1160 0000 4068 3005

Mr. Marty Herling
3265 Baldwin Avenue
Makawao, Hawaii 96768

Dear Mr. Herling:

RE: State Land Use Commission Special Use Permit For The Banyan
Tree Bed And Breakfast For Land In The State Rural District Located
At TMK: 2-4-002:002, Hamakuapoko, Makawao, Maui, Hawaii
(SUP2 2000/0007)

At its regular meeting on August 22, 2006, the Maui Planning Commission (Commission) reviewed the above request and after due deliberation and receipt of testimony and exhibits, hereby orders approval, subject to the following conditions:

STANDARD CONDITIONS:

1. That the Land Use Commission Special Use Permit shall be valid until April 25, 2011, subject to further extension by the Maui Planning Commission upon a timely request for extension filed at least 90 days prior to its expiration. The Commission may require a public hearing on the time extension;
2. That the conditions of this State Special Use Permit shall be enforced pursuant to Sections 205-12 and 205-13, Hawaii Revised Statutes. Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty days to cure the violation. If the permit holder fails to cure the violation within sixty days of said notice, the appropriate enforcement agency shall issue an order which may

require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed \$1,000.00 per violation; that a civil fine not to exceed \$5,000.00 shall be issued if violation not cured within six months of the issuance of the order. The order shall become final thirty days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the planning department within said thirty days. Upon receipt of a request for a hearing, the planning department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the planning director or the director's designee in accordance with the provisions of chapter 91, HRS, as amended;

3. That the subject Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Maui Planning Commission. However, in the event that a contested case hearing preceded issuance of said Land Use Commission Special Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel;
4. That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Land Use Commission Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Land Use Commission Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this 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 the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. A copy of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order;

5. That full compliance with all applicable governmental requirements shall be rendered;
6. That full compliance with the conditions of the Conditional Permit (CP 2000/0012: Ordinance No. 3377, Bill 24 (2006)) shall be rendered;
7. That the applicant shall submit to the Planning Department five copies of a detailed report addressing its compliance with the conditions established with the subject Special Use Permit. The compliance report shall be submitted to the Planning Department with the renewal of the subject Special Use Permit;

PROJECT SPECIFIC CONDITIONS:

8. That the property shall not be used as a venue for special events;
9. That the operation of the bed and breakfast complex shall be consistent with the character of the existing neighborhood;
10. That the uses on the premises shall create no impact greater than a typical residential home in the Sunnyside neighborhood;
11. That the occupancy policy applicable to the bed and breakfast units shall be consistent with Maui County and Federal standards related thereto;
12. That no exterior live amplified sound shall be permitted on the premises;
13. That the guests of the bed and breakfast facilities shall be required to limit the number of off-site visitors to the property, consistent with the goal of minimizing the impact of the use upon the neighborhood;
14. That the number of guest rooms on the property shall be restricted to a maximum of seven (7), with the understanding that no rooms for transient guests shall be contained in any future residential dwelling to be constructed on the premises;
15. That any future residential dwelling to be built on the subject property shall be for personal use of the owner/lessor of the property and shall

Mr. Marty Herling
September 5, 2006
Page 4

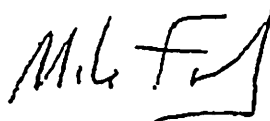
be constructed in conformance with that section of the Maui County Code related to "Accessory Dwellings";

16. That no portion of the accessory dwelling shall exceed 20 feet in height, regardless of the number of stories; and
17. That the use of the subject dwelling shall be limited to long-term residential use only and not less than 90 days per term.

Further, the Commission adopted the enclosed Addendum Report and Recommendation prepared by the Maui Planning Department for the August 22, 2005 meeting as its Findings of Fact, Conclusions of Law, and Decision and Order. Parties to proceedings before the Commission may obtain judicial review of decision and orders issued by the Commission in the manner set forth in Chapter 91-14, Hawaii Revised Statutes.

Thank you for your cooperation. If additional clarification is required, please contact Ms. Robyn Loudermilk, Staff Planner, of my office at 270-7180.

Sincerely,

A handwritten signature in black ink, appearing to read "M. W. Foley", with a stylized flourish at the end.

MICHAEL W. FOLEY
Planning Director

Enclosure

MWF:RLL:bv

cc: Clayton I. Yoshida, AICP, Planning Program Administrator
Aaron H. Shinmoto, PE, Planning Program Administrator (2)
Robyn L. Loudermilk, Staff Planner
Development Services Administration (2)
Anthony Ching, Director, State Land Use Commission
Michael Summers, Chris Hart and Partners, Inc. (Enclosure)
Project File
General File
(K:\WP_DOCS\PLANNING\DBA\2000\0006_BanyanTreeB_B\SUP2approval.wpd)



Landscape Architecture
City & Regional Planning

January 25, 2011

DEPT OF PLANNING
COUNTY OF MAUI
RECEIVED

'11 JAN 25 P2:05

Mr. William Spence, Director
County of Maui
Department of Planning
250 South High Street
Wailuku, Hawaii 96793

SUBJECT: Time Extension for the Banyan Tree Bed & Breakfast (CP
2000/0012, SUP2 2000/0007) (CH&P Job No. 11-004)

Dear Mr. Spence

On behalf of our client, Mr. Martin Herling, we are submitting a request to amend the terms of the above-referenced State Special Use Permit (SUP) and County Conditional Use Permit (CP) in order to extend the life of those permits beyond the initial 5-year period. Condition No. 1 of the CP currently reads as follows:

CP Condition No. 1: That the Conditional Permit shall be valid for a period of one (1) year from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this one-year period may be granted pursuant to Section 19.40.090, Maui County Code.

We note that the effective date of that ordinance was April 25, 2006.

Condition No. 1 of the SUP reads as follows:

SUP2 Condition No. 1: That the Land Use Commission Special Use Permit shall be

valid until April 25, 2011, subject to further extensions by the Maui Planning Commission upon a timely request for extension filed at least 90 days prior to its expiration. The Commission may require a public hearing on the time extension.

We are requesting a ten-year time extension so that both permits will be valid until April 25, 2021. Condition No. 5 of the SUP requires the submittal of a compliance report with the time extension request. Analysis of compliance follows.

SUP Conditions (see Attachment A)

No. 1: That the Conditional Permit shall be valid for a period of one (1) year from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this one-year period may be granted pursuant to Section 19.40.090, Maui County Code.

Response: This time extension request addresses Condition No. 1.

No. 2: That the conditions of this State Special Use Permit shall be enforced pursuant to §§205-12 and 205-13, Hawaii Revised Statutes. Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty days to cure the violation. If the permit holder fails to cure the violation within sixty days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed \$1,000 per violation; that a civil fine not to exceed \$5,000 shall be issued if violation not cured within six months of the issuance of the order. The order shall become final thirty days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the planning department within said thirty days. Upon receipt of a request for a hearing, the planning department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the planning director or the director's designee in accordance with the provisions of chapter 91, HRS, as amended.

Response: In the five years in which the Banyan Tree B&B has been

operating, there have been no known complaints from neighbors or other violative activity.

No. 3: That the Subject Land Use Commission Special Use Permit shall not be transferred without the prior written approval of the Maui Planning Commission. However, in the event that a contested case hearing preceded issuance of said Land Use Commission Special Use Permit, a public hearing shall be held upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.

Response: The Permit has not been transferred.

No. 4: That the applicant, its successors and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by subject Land Use Commission Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Land Use Commission Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County of Maui against any and all claims or demands for properly damage, personal injury and/or death arising out of this 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 the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. A copy of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the date of transmittal of the decision and order.

Response: The policy is included with this report. See Attachment B.

No. 5: That full compliance with all applicable governmental requirements shall be rendered.

Response: This Compliance Report addresses this condition.

No. 6: That full compliance with the conditions of the Conditional Permit (CP 2000/0012: Ordinance No. 3377, Bill 24 (2006) shall be rendered.

Response: Compliance with this condition is addressed below in the section CP Conditions.

No. 7: That the applicant shall submit to the Planning Department 5 copies of a detailed report addressing its compliance with the conditions established with the subject Special Use Permit. The compliance report shall be submitted to the Planning Department with the renewal of the subject Special Use Permit.

Response: This report addresses Condition No. 5.

No. 8: That the property shall not be used as a venue for special events.

Response: The property has not been used for special events.

No. 9: That the operation of the bed and breakfast complex shall be consistent with the character of the existing neighborhood.

Response: The operation of the Banyan Tree B&B is consistent with the character of the neighborhood and no complaints have been filed.

No. 10: That the uses on the premises shall create no impact greater than a typical residential home in the Sunnyside neighborhood.

Response: As evidenced by the lack of complaints, uses at the Banyan Tree B&B have had no impacts beyond that of a typical residential home.

No. 11: That the occupancy policy applicable to the bed and breakfast units shall be consistent with Maui County and Federal standards related thereto.

Response: The Banyan Tree B&B operates consistently with all applicable standards.

No. 12: That no exterior live amplified sound shall be permitted on the premises.

Response: No exterior, amplified sound is allowed on the premises.

No. 13: That the guests of the bed and breakfast facilities shall be required to limit the number of off-site visitors to the property, consistent with the goal of minimizing the impact of the use upon the neighborhood.

Response: Management restricts the number of people on-site to reasonable levels commensurate with a B&B. No complaints have been filed regarding number of visitors.

No. 14: That the number of guest rooms on the property shall be restricted to a maximum of seven (7), with the understanding that no rooms for transient guests shall be contained in any future residential dwelling to be constructed on the premises.

Response: There are a total of seven (7) guest rooms on the property.

No. 15: That any future residential dwelling to be built on the subject property shall be for personal use of the owner/lessor of the property and shall be constructed in conformance with that section of the Maui County Code related to "Accessory Dwellings".

Response: An accessory dwelling was constructed and properly permitted.

No. 16: That no portion of the accessory dwelling shall exceed 20 feet in height, regardless of the number of stories.

Response: The accessory dwelling does not exceed 20 feet in height.

No. 17: That the use of the subject dwelling shall be limited to long-term residential use only and not less than 90 days per term.

Response: The accessory dwelling is only used for long-term residential purposes.

CP Conditions (see Attachment C)

No. 1: That the Conditional Permit shall be valid for a period of five (5) years from the effective date of this ordinance; provided, that an extension of this Conditional Permit beyond this five-year period may be granted pursuant to Section 19.40.090, Maui County Code.

Response: This time extension request addresses Condition No. 1.

No. 2: That the Conditional Permit shall be nontransferable unless the Council approves transfer by ordinance.

Response: The Permit has not been transferred.

No. 3: That Marty Herling shall exercise reasonable due care as to third parties with respect to all areas affected by subject Land Use Commission Special Use Permit and shall procure at its own cost and expense, and shall maintain during the entire period of this Land Use Commission Special Use Permit, a policy or policies of comprehensive liability insurance in the minimum amount of ONE MILLION AND NO/100 DOLLARS (1,000,000.00) naming the County of Maui as an additional named insured, insuring and defending the applicant and County of Maui against any and all claims or demands for property damage, personal injury and/or death arising out of this 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 the applicant of said rights; and (2) all actions, suits, damages and claims by whomsoever brought or made by reason of the non-observance or non-performance of any of the terms and conditions of this permit. A copy of a policy naming County of Maui as an additional named insured shall be submitted to the Department within ninety (90) calendar days from the effective date of this ordinance.

Response: See response to SUP Condition No. 4 above.

No. 4: That Marty Herling shall develop 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 may result in the revocation of the Conditional Permit pursuant to Section 19.40.080 of the Maui county Code.

Response: The property has been developed as represented before the Maui County Council.

No. 5: That full compliance with all applicable governmental requirements shall be rendered.

Response: The Banyan Tree B&B operates consistently with all applicable standards.

No. 6: That full compliance with the conditions of the Land Use Commission Special Use Permit (SUP2 2000/0007) shall be rendered.

Response: Compliance with this condition is addressed above in the section SUP Conditions.

No. 7: That Marty Herling shall grade the banks on each side of the driveway to improve sight distance.

Response: The banks along the driveway were graded.

No. 8: That Marty Herling shall repave the driveway upon completion of the grading of the banks.

Response: The driveway has been paved.

No. 9: That Marty Herling shall execute a hold harmless agreement indemnifying the County should final sight distance after grading of the banks not be adequate to meet County standards.

Response: a Hold Harmless Agreement was executed with the County.

No. 10: That Marty Herling shall install warning signage for vehicles traveling in an east and westbound direction along Baldwin Avenue.

Response: The Department of Public Works determined that warning signs were unnecessary and would not give permission to install such signage in the County right-of-way.

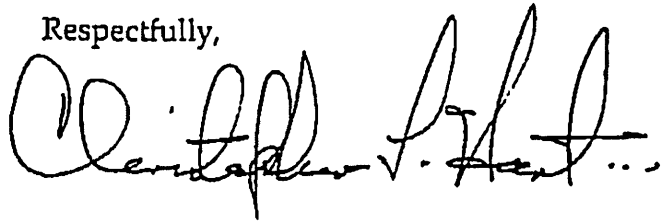
CP Condition No. 11: That Marty Herling shall continue to meet the requirements for individual wastewater treatment systems of the State Department of Health.

Response: The property is in compliance with applicable DOH requirements.

Mr. William Spence, Director
Time Extension Request for the Banyan Tree B&B
January 25, 2011
Page 9 of 9

Please feel free to contact me with questions or comments on this time extension request.

Respectfully,

A handwritten signature in black ink, appearing to read "Christopher L. Hart". The signature is fluid and cursive, with a large initial "C" and "H".

Christopher L. Hart, ASLA
President
Landscape Architect/Planner

ENCLOSURES

cc. Mr. Martin Herling
Project File 11-004



R-504

STATE OF HAWAII
BUREAU OF CONVEYANCES
RECORDED
APR 25, 2007 08:02 AM

Doc No(s) 2007-073953

/s/ CARL T. WATANABE
REGISTRAR OF CONVEYANCES

20 1/1 28

LAND COURTREGULAR SYSTEM

AFTER RECORDATION, RETURN BY: MAIL (x) PICK-UP ()
Department of Public Works and Environmental Management
Development Services Administration
County of Maui
250 South High Street
Wailuku, Maui, Hawaii 96793

S:\CLERICAL\KEU\PW\Master Templates\Hold Harmless Drvwy (rev 010907).wpd

TMK NO. (2) 2-4-002:002 Total Pages: 5HOLD-HARMLESS AGREEMENT

Chapter 12.08 of the Maui County Code, as well as the national standards, specifications, and requirements used in applying the provisions of Chapter 12.08, require that driveways in the County of Maui have specified sight distance. The undersigned owner(s) of the property located at TMK: (2) 2-4-002:002 ("subject property") hereby acknowledge(s) and agree(s) that the subject property does not meet the specified sight distance requirements for its driveway as required by Chapter 12.08. As a condition to, and in consideration of, the County's granting of a driveway and/or building permit for the subject property, the undersigned hereby agree(s) to indemnify, defend and hold the County of Maui, its employees, officers, agents and assigns

harmless from and against any claim or demand for loss, liability or damage, including, but not limited to, claims for property damage, personal injury or death, arising out of any accident, incident or occurrence on the subject property, and any sidewalks and roadways adjacent thereto, or occasioned by any act or nuisance made or suffered on the subject property, and from and against all action, suits, damages, and claims by whomsoever brought or made alleged to have been caused by inadequate sight distance of the driveway.

The undersigned further expressly acknowledge(s) and agree(s) that this Agreement shall run with the land and shall bind and constitute notice to all subsequent grantees, mortgagees, lienors, and any other person or entity who claims an interest in the subject property.

This Agreement may be executed in counterparts, each of which shall be deemed an original, and said counterparts shall together constitute one and the same Agreement.

COUNTY OF MAUI

By  4/17/07
CHARMAINE TAVARES
Its Mayor

PROPERTY OWNER(S):

Martin Healy 3/27/01
Signature Date
Martin Healy
Print Name

Signature Date

Print Name

APPROVED AS TO FORM
AND LEGALITY:

Cindy Y. Young
CINDY Y. YOUNG
Deputy Corporation Counsel
County of Maui

STATE OF HAWAII)
) SS.
COUNTY OF MAUI)

On this 18th day of April, 2007,
before me appeared CHARMAINE TAVARES, to me personally known, who
being by me duly sworn did say that she is the Mayor of the County
of Maui, a political subdivision of the State of Hawaii, in the
capacity shown, having been duly authorized to execute such
instrument in such capacity, and that the seal affixed to the
foregoing instrument is the lawful seal of the said County of Maui,
and that the said instrument was signed and sealed in behalf of
said County of Maui by authority of its Charter, and the said
CHARMAINE TAVARES acknowledged the said instrument to be the free
act and deed of said County of Maui.

IN WITNESS WHEREOF, I have hereunto set my hand and
official seal.

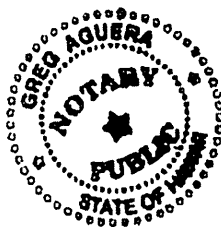
Kelū P. Nahonikaika
Notary Public, State of Hawaii
Print Name Kelū P. Nahonikaika
My commission expires: 4/30/10

L.S.

STATE OF HAWAII)
COUNTY OF MUNI) SS.

On this 27th day of MARCH, 2007, before me personally appeared MARTIN HERLING, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



[Signature]
Notary Public, State of Hawaii
GREG AGUERRE
(Print Name)

My commission expires: 10/6/10

STATE OF HAWAII)
COUNTY OF _____) SS.

On this _____ day of _____, 20____, before me personally appeared _____, to me personally known, who, being by me duly sworn or affirmed, did say that such person(s) executed the foregoing instrument as the free act and deed of such person(s), and if applicable in the capacities shown, having been duly authorized to execute such instrument in such capacities.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public, State of Hawaii

(Print Name)

My commission expires: _____

ALAN M. ARAKAWA
Mayor

DAVID C. GOODE
Director

ROWENA M. DAGDAG-ANDAYA
Deputy Director

Telephone: (808) 270-7745
Fax: (808) 270-7975



COUNTY OF MAUI
**DEPARTMENT OF PUBLIC WORKS
ENGINEERING DIVISION**
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793

RALPH NAGAMINE, L.S., P.E.
Development Services Administration

CARY YAMASHITA, P.E.
Engineering Division

BRIAN HASHIRO, P.E.
Highways Division

RECEIVED

AUG 24 2011

CHRIS HART & PARTNERS, INC.
Landscape Architecture and Planning

August 22, 2011

Mr. Brett A. Davis, Associate Planner
CHRIS HART & PARTNERS, INC.
115 N. Market Street
Wailuku, HI 96793

SUBJECT: BANYAN TREE BED AND BREAKFAST

Dear Mr. Davis:

This letter responds to your email to Department staff, dated July 11, 2011, requesting comments on a hold harmless agreement and installation of warning signs. A copy of that email is attached. Upon review of site conditions, we offer the following comments:

1. Sight distance as measured by staff from the subject driveway does not satisfy standards and recommendations as set forth in "A Policy on Geometric Design of Highways and Streets" by the American Association of State Highway Transportation Officials, 2004.
2. There are no appropriate warning signs that may be recommended for installation along Baldwin Avenue pertaining to the driveway for the subject project.

Should you have any questions, please feel free to contact Nolly Yagin of our Division at (808) 270-7745.

Sincerely,
A handwritten signature in black ink, appearing to read "David C. Goode".
DAVID C. GOODE
Director of Public Works

NY:gg(ED11-462)
S:\ENGINEERING\11 Response Letters\Mr-CHP\Maui-BanyanTreeBB_110818.wpd

Attachment

ALAN M. ARAKAWA
Mayor

WILLIAM R. SPENCE
Director

MICHELE CHOUTEAU MCLEAN
Deputy Director



COUNTY OF MAUI
DEPARTMENT OF PLANNING

January 18, 2012

CERTIFIED MAIL - #7010 3090 0000 4921 0064

Mr. Christopher L. Hart, ALSA
Chris Hart & Partners, Inc.
115 North Market Street
Wailuku, Hawaii 96793-1717

Dear Mr. Hart:

**SUBJECT: TIME EXTENSION OF THE CONDITIONAL PERMIT (CP) AND LAND
USE COMMISSION SPECIAL USE PERMIT (SUP) APPLICATIONS
FOR THE BANYAN TREE BED AND BREAKFAST, LOCATED AT
3265 BALDWIN AVENUE, MAKAWAO, ISLAND OF MAUI, HAWAII;
TMK: 2-4-002:002 (CP 2000/0012) (SUP2 2000/0007)**

CONDITIONAL PERMIT

Upon analysis of the subject request for a time extension of CP 2000/0012, the Department of Planning (Department) has made the following determinations:

1. The permit holder is in compliance with the conditions of approval for CP 2000/0012 granted by County Council Ordinance No. 3377, Bill No. 24 on April 25, 2006.
2. The permitted use has not been substantially changed and new uses have not been added that may result in significant impacts above what would result from the approved CP.
3. Agencies have not identified new matters of concern that require mitigation.
4. No protests were received from the property owners and lessees of record located within five hundred feet (500') of the parcel on which the conditional use is located. The notice of filing of the application for a time extension of the conditional use was mailed by the Applicant on September 23, 2011, with no protests received during the challenge period.
5. The criteria enumerated in Ordinance No. 3827 have been met, allowing the Director to approve a ten (10) year time extension of the CP for the continued operation of the Banyan Tree Bed and Breakfast.

Accordingly, the request for a time extension of the subject Conditional Permit (CP 2000/0012) is hereby granted and shall be valid until April 25, 2021.

LAND USE COMMISSION SPECIAL USE PERMIT (SUP)

At its regular meeting on January 10, 2012, the Maui Planning Commission (Commission) reviewed the request for a time extension for the operation of the Banyan Tree Bed and Breakfast and after due deliberation, and receipt of testimony and exhibits, approved a time extension of Land Use Commission SUP, SUP2 2000/0007, subject to the following Conditions of Approval:

STANDARD CONDITIONS

1. That the Land Use Commission SUP shall be valid until April 25, 2021, subject to extension by the Planning Director (Director) upon a timely request for extension filed at least ninety (90) days prior to its expiration. The Director may forward the time-extension request to the Commission for review and approval and may require a public hearing on the time extension by the Commission.
2. That the conditions of this Land Use Commission SUP shall be enforced, pursuant to Section 205-12 and 205-13, Hawaii Revised Statutes (HRS). Failure to comply with one (1) or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one (1) or more of the following: that the violation activity cease; that the violation development be removed; that a civil fine be paid not to exceed \$1,000.00 per violation; and that a civil fine not to exceed \$5,000.00 shall be issued if violation not cured within six (6) months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand-delivery unless written request for a hearing is mailed or delivered to the Department within said thirty (30) days. Upon receipt of a request for a hearing, the Department shall specify a time and place for the permit holder to appear and be heard. The hearing shall be conducted by the Director or the director's designee in accordance with the provisions of Chapter 91, HRS, as amended.
3. That the subject Land Use Commission SUP shall not be transferred without the prior written approval of the Commission.
4. That the Applicant shall exercise reasonable due care as to third parties with respect to all areas affected by subject Land Use Commission SUP, and shall procure at its own cost and expense, and shall maintain during the entire period of this Land Use Commission SUP, a policy or policies of comprehensive liability

in the minimum amount of ONE MILLION AND NO/100 DOLLARS (\$1,000,000.00) naming the County of Maui as an additional insured, insuring and defending the County of Maui against any and all claims or demands for property damage, personal injury, and/or death arising out of this 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 the Applicant 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 this permit. A copy of the Certificate of Insurance naming County of Maui as an additional insured shall be submitted to the Department upon renewal of existing policies, and with the submittal of a time-extension request. (Continued documentation is required in the Compliance Report.)

5. That full compliance with all applicable governmental requirements shall be rendered.
6. That full compliance with the conditions of the CP as renewed (CP 2000/0012) shall be rendered.
7. That the Applicant shall submit to the Department five (5) copies of a detailed report addressing its compliance with the conditions established with the subject Land Use Commission SUP. The Compliance Report shall be submitted to the Department with the renewal of the subject Land Use Commission SUP.

PROJECT SPECIFIC CONDITIONS

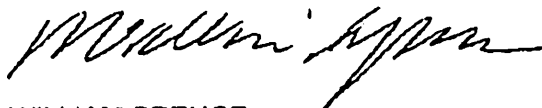
8. That the property shall not be used as a venue for special events.
9. That the operation of the transient vacation rental complex shall be consistent with the character of the existing neighborhood.
10. That the uses on the premises shall create no impact greater than a typical residential home in the Sunnyside neighborhood.
11. That the occupancy policy applicable to the transient vacation rental units shall be consistent with Maui County and Federal standards related thereto.
12. That no exterior live amplified sound shall be permitted on the premises.
13. That the guests of the transient vacation rental facilities shall be required to limit the number of off-site visitors to the property, consistent with the goal of minimizing the impact of the use upon the neighborhood.

14. That the number of guest rooms on the property shall be restricted to a maximum of seven (7), with the understanding that no rooms for transient guests shall be contained in any future residential dwelling to be constructed on the premises.
15. That the "accessory dwelling" built on the subject property in 2008 shall be for personal use of the owner/lessor of the property.
16. That no portion of the "accessory dwelling" shall exceed twenty feet (20') in height, regardless of the number of stories.
17. That the use of the "accessory dwelling" shall be limited to long-term residential use only and not less than ninety (90) days per term.

Further, the Commission adopted the Report and Recommendation prepared by the Department for the January 10, 2012, meeting as its Findings of Fact, Conclusions of Law, and Decision and Order. Parties to proceedings before the Commission may obtain Judicial Review of Decision and Orders issued by the Commission in the manner set forth in Chapter 91-14, HRS.

Thank you for your cooperation. If additional clarification is required, please contact Staff Planner Kurt Wollenhaupt at kurt.wollenhaupt@maulcounty.gov or at (808) 270-1789.

Sincerely,



WILLIAM SPENCE
Planning Director

xc: Clayton I. Yoshida, AICP, Planning Program Administrator (PDF)
Aaron H. Shinmoto, PE, Planning Program Administrator (PDF)
Kurt F. Wollenhaupt, Staff Planner (PDF)
Development Services Administration
Department of Water Supply
Department of Public Works
Department of Finance, Real Property Tax Division
Department of Fire & Public Safety
Martin Herling, Applicant
CZM File (SUP2)
Project File
General File

WRS:KFW:sa

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**MAUI PLANNING COMMISSION
PORTION OF REGULAR MINUTES
ITEM C.4
NOVEMBER 26, 2019**

Ms. McLean: Your fourth public hearing item this morning is a request from Marty Herling and Helaina Di Martino, daughter of Marty Herling for a time extension and permit transfer of a Conditional Permit and State Land Use Commission Special Permit for the transient vacation rental named as Banyan Tree Bed and Breakfast within the RU-1 Rural Zoning District located at 3265 Baldwin Avenue, at TMK: 2-4-002:002 in Makawao and again, Kurt Wollenhaupt is the project planner.

4. MARTY HERLING AND HELAINA DI MARTINO (Daughter of Marty Herling) requesting a Time Extension and Permit Transfer of a Conditional Permit and State Land Use Special Permit for the Transient Vacation Rental named as Banyan Tree Bed and Breakfast within the RU-1 Rural Zoning District located at 3265 Baldwin Avenue, TMK (2) 2-4-002:002, Makawao, Island of Maui (CP 2000/0012 and SUP2 2000/0007) (K. Wollenhaupt)

Mr. Kurt Wollenhaupt: Good afternoon again. The Members of the Maui Planning Commission this project is before you for a transfer of an existing project that has been successfully operating since the County Council granted a Conditional Permit to Mr. Marty Herling in the Rural Zone for what's known as the Banyan Tree Bed and Breakfast. So if we go all the way back to 2006, the Council approved this project. Today is not for any changes except, except to transfer this permit from Mr. Marty Herling to his daughter, Helaina Di Martino who is in the audience today and the reason that we go through this rather lengthy process having the Commission make a recommendation to the Council and also that the Commission looks at the Special Permit is that the County Council put a condition in their Conditional Permit that said that all transfers shall only be approved by ordinance so that means we move through this whole project again. But I just want to emphasize that there's no expansion to this. This project has been vetted thoroughly by previous planning commissions and the County Council for a...now this is where it gets a little complicated, it's a transient vacation rental operating as a bed and breakfast needing a Condition Permit because it's over six bedrooms. So they don't have any ability to apply for what we just read about a B&B, they have more than six so they needed to go through the more lengthy process of getting a Conditional Permit and being reviewed Council and having conditions on.

So there's two permits that this operation has to go through. The need a Special Permit to operate in the Rural District and you are the final decision making body to grant a Special Permit. Now you've done this many times, Special Permit in the Ag District for a Short-Term Rental or a B&B. This is a Special in the Rural District and so today, we're also wishing a request to transfer this Special Permit and also to extend the permit. And we're also looking at the Conditional Permit to send a recommendation to the Council. So there is, there is a presentation that the partners at Chris Hart and Partners will give right now.

Mr. Brett Davis: Good afternoon, my name is Brett Davis. I'm a planner at Chris Hart and Partners. I have a brief presentation to show you on the Banyan Tree Bed and Breakfast.

Mr. Carnicelli: Kurt, we took a break to have you set up.

Mr. Wollenhaupt: It went to Acrobat, sorry about this.

1
2 Mr. Carnicelli: So Director while we're waiting I have a question and maybe Brett will address this
3 but what is the survivorship of a B&B Permit? Do they...if the permit holder passes away is there
4 survivorship to the next of kin in a B&B Permit. Mr. Croly might even know the answer to that
5 one.

6
7 Ms. McLean: I would need to check the Code to be certain.

8
9 Mr. Carnicelli: Okay, thank you.

10
11 Mr. Wollenhaupt: It's coming up as a PDF but it doesn't seem to be connecting to the projector.

12
13 Mr. Carnicelli: I hope AKAKU is on you right now. They might edit this part out. Brief recess.

14
15 A recess was called at 3:00 p.m., and the meeting was reconvened at 3:02 p.m.

16
17 Mr. Carnicelli: The meeting is back in session. Brett go ahead.

18
19 Mr. Davis: Good afternoon my name is Brett Davis. I'm a planner with Chris Hart and Partners.
20 I have a few brief slides just to show you the character of the building. I'm gonna speak on the
21 side of the podium so that I can make sure I'm seeing the correct slide while talking.

22
23 Mr. Carnicelli: I tell you what Brett, why don't you...let's just go ahead. Why don't you just start
24 to tell us the gist of where it is that you're going and if we've got additional questions and we want
25 to drill down into your presentation we can do that.

26
27 Mr. Davis: Understood thank you.

28
29 Mr. Carnicelli: So we're going to test your memory how well you know that slide presentation.

30
31 Mr. Davis: Good afternoon, my name is Brett Davis planner with Chris Hart and Partners. We're
32 here for the request for transfer and time extension today for Banyan Tree Bed and Breakfast.
33 As you can see here this is an aerial photograph of the site. It's located on Baldwin Avenue just
34 below the Makawao Cemetery. Here's a picture of the driveway entrance into the Banyan Tree.
35 Attached is a site plan to show you the two existing structures. They have a swimming pool and
36 an accessory dwelling that the Di Martinos currently live in. Here's a few photos of the existing
37 parking lot just to give the character of the area. This is the accessory dwelling that the owners
38 live in currently. This is the office at the Banyan Tree. And they have a few small cottages. This
39 is the Gardenia Cottage, you will see that all of the units are single story. It's a older style
40 plantation form. This is a photo of the Plumeria and Banyan Suites. The swimming pool is last
41 and those are photos of the property and we're just here to answer any questions that you have,
42 and again the owner is available. Thank you.

43
44 Mr. Carnicelli: Thank you. At this point in time, we're gonna go ahead and open up the floor for
45 public testimony. Would anybody like to testify on this particular item? Seeing none, we are
46 gonna go ahead without objection close public testimony. And at this point, do we have any

1 questions from the Commission? I have a question. So as I understand this we, Kurt coming
2 back to you, why are we here, so we're making a recommendation on the Conditional Permit to
3 the Council.

4
5 Mr. Wollenhaupt: You're making a recommendation on the Conditional Permit on the Council that
6 the...there will be two things that happen. One is that the permit will be transferred to
7 Martino...Helena Di Martino and that the SUP would be valid for a period of five years from the
8 effective date of the ordinance the Council would adopt or December 31, 2024, but getting to the
9 Council will be a multi-month process. So it's a extension and a transfer.

10
11 Mr. Carnicelli: Right.

12
13 Mr. Wollenhaupt: That's what you're approving. Recommendation to the Council and approval
14 of the Special Permit by the Commission.

15
16 Mr. Carnicelli: Okay, but I'm trying to separate this out because I kinda remember...it may not
17 have been this one specifically but the whole part of okay, I'm running the B&B, I'm gonna put my
18 daughter on there. Oh, but it's not a transfer that's not what we're doing here, right, we're just
19 adding, and we're going wait a second, this is an end around, this is an end around and so now
20 suddenly this is from March, we're talking you know six, half a year later it's like oh, now we're
21 transferring it. So how is this not an end around of transferring of a permit which is not
22 transferrable?

23
24 Mr. Wollenhaupt: Oh well, a couple of things. Yes indeed there was a staff report that was done
25 to add Helena's name to the existing permit that was approved by this body.

26
27 Mr. Carnicelli: Right.

28
29 Mr. Wollenhaupt: It was determined that was a nonsubstantive amendment and the applicant
30 was made fully aware that Martin Herling who has the permit was the primary runner, he was
31 permit holder that it would be appropriate for a nonsubstantive amendment to add the daughter,
32 but she could not just take over this permit without what the processes we're going through. So
33 the ordinance allows a transfer as long as they go through the whole process. So they're going
34 to have a new ordinance written. They're going to have to be agendized before the Planning
35 Committee of the Council, they're going to have to try to get a majority of those members to send
36 it up to the Full Council. So the ordinance allows a transfer by the Council. So they're going
37 through the whole process and also they're requesting a transfer for the Special Permit and the
38 condition is the subject...shall not be transferred without the prior written approval of the
39 Commission. So that's indeed why we didn't let them transfer with the addition of the daughter
40 on the permit and told them they have to go through this whole process. So—

41
42 Mr. Carnicelli: Right, and so then our approval on our part we could make conditional on like
43 okay, if the Council doesn't approve their end of it then we don't approve our end of it.

44
45 Mr. Wollenhaupt: Well, if you approve the Special Permit and the Council doesn't approve then
46 there's no deal, it doesn't move forward. They'll have to cease and stop.

1
2 Mr. Carnicelli: Okay.

3
4 Mr. Wollenhaupt: And you can of course add...the project is now open for review, so that does
5 not prevent you from adding conditions as you might see fit at this time or making conditions that
6 you'd recommend to the Council.

7
8 Mr. Carnicelli: So, I'm just trying to look at this as far as any precedence, a precedent setting type
9 of thing. So let's just say that they're not father-daughter, it's just like okay, it's Fred and Sally
10 and Fred wants to sell this Sally is this this way with which okay is that...if I'm understanding it, if
11 you go up to the Council and you go through this whole entire process, the Council can approve
12 a transfer of a B&B Permit and a Conditional Permit then 'cause that's how I'm understanding
13 you're saying this right now is that as long as it goes through the Council process they can.

14
15 Mr. Wollenhaupt: Well, this is not a B&B or Short-Term Rental. The conditions a B&B is that it
16 shall not be transferred that's it.

17
18 Mr. Carnicelli: Period, full stop.

19
20 Mr. Wollenhaupt: With one exception for a short-term rental, upon the death of the individual
21 there can be a movement of the short-term rental to an immediate family member as defined by
22 father, daughter, mother, sister, but this all...this is all running on a whole different program than
23 short-term rental or B&B that's because the Council puts the conditions they want. It shall not be
24 transferred except by ordinance. So if they decide they're not going to transfer it, this is dead.
25 And if they decide they wish to transfer it then it will move on. So there's a difference between
26 the B&B and these short-term rentals you're seeing that actually has a condition it shall not be
27 transferred. You'd have to apply for a whole new permit again. There's no opportunity for
28 transferring.

29
30 Mr. Carnicelli: Okay, as long my Commissioners, you guys understand this 'cause I'm still a little
31 slow, I'm still not—

32
33 Ms. Pali: Can I repeat it back to you? So we can say if we think it's a good idea, then we can
34 say yes we recommend County Council to do it, but County Council can then either agree with us
35 and we move forward with a whole new process or County Council says no or we say no and
36 either way it would be dead in the water.

37
38 Mr. Wollenhaupt: If you make a no recommendation on the Special...or if you would not approve
39 the Special Permit today then it would be dead.

40
41 Ms. Pali: Well, we recommend and say okay, hey let's give the applicant, feed them to the wolves,
42 right and then they say no, it's dead.

43
44 Mr. Wollenhaupt: Done.

45

Maui Planning Commission
Portion of Regular Minutes
Item C.4
Page 5

1 Ms. Pali: So they would just have to get a yes, a yes and then they would still then start the
2 process.

3
4 Mr. Wollenhaupt: Well, this...they're in the process.

5
6 Ms. Pali: Oh, so this is it. This is our review and then they get their review.

7
8 Mr. Wollenhaupt: That is correct.

9
10 Ms. Pali: Okay, so it's like a whole nother review then.

11
12 Mr. Wollenhaupt: And just to go further on the previous B&B you just approved—

13
14 Mr. Robinson: We're good. So Director, why is it even coming to us, why isn't it already inside
15 the rules and then it comes the Director's discretion instead of even having to have this item?

16
17 Ms. McLean: That would be what the Council spelled out in the ordinance when they first
18 approved the Conditional Permit. That's up to the Council to decide how they want renewals to
19 happen if and how they want transfers to happen. So they tailor make each conditional permit
20 based on what the project is. Some they allow the Director to do things and others they do not.

21
22 Mr. Carnicelli: Any other questions? Yes, Kurt?

23
24 Mr. Wollenhaupt: In the previous B&B you just approved, Condition 3 says, the B&B Home Permit
25 shall not be transferred. This one says that the Special Permit shall not be transferred except
26 without the approval of this body and the County Council said it shall not be transferred except by
27 approval of a new ordinance by the Council that's why they can ask for this transfer.

28
29 Mr. Carnicelli: Is the ownership of the property transferring?

30
31 Mr. Wollenhaupt: The ownership I believe is transferred.

32
33 Mr. Carnicelli: Concurrently or it is already transferred?

34
35 Mr. John Di Martino: Hi, I'm John Di Martino, yeah it already transferred.

36
37 Mr. Carnicelli: Okay, thank you. All right, I have no further questions. Does anybody else have
38 further questions? Kurt, we'll go ahead and take your recommendation then.

39
40 Mr. Wollenhaupt: There's two things, one is the Special Permit and that would be, it recommends
41 approval of the Land Use Commission Special Permit transfer and time extension as outlined with
42 15 conditions and it would be a recommendation that the Maui Planning Commission
43 recommends that the Council will approve the Conditional Permit with seven conditions and that
44 it would be for a period of five years from the effective date of an ordinance that the Council would
45 prepare and pass.

46

Maui Planning Commission
Portion of Regular Minutes
Item C.4
Page 6

1 Mr. Carnicelli: Thank you. Can I have a motion please?

2
3 Mr. Freitas: Motion to pass.

4
5 Mr. Carnicelli: Moved by Commissioner Freitas to approve as recommended by Staff.

6
7 Mr. Freitas: Yes.

8
9 Ms. La Costa: I second.

10
11 Mr. Carnicelli: Seconded by Commissioner La Costa.

12
13 Ms. La Costa: I have a question are we doing two different?

14
15 Mr. Carnicelli: We're gonna do this altogether.

16
17 Ms. La Costa: Okay.

18
19 Mr. Carnicelli: Yeah, the whole recommendation all at once.

20
21 Mr. Hopper: So it's a recommendation to approve the Special Permit as recommended by Staff
22 and to recommendation approval to the Council of the Conditional Permit as recommended by
23 Staff all in one motion.

24
25 Mr. Carnicelli: Correct. All in one motion. Director.

26
27 Ms. McLean: There is a typo in the Conditional Permit, Condition No. 4 it says that the Helena Di
28 Martino, "the" should be deleted.

29
30 Mr. Carnicelli: Unless you're royalty. Discussion on the motion?

31
32 Mr. Freitas: I would like to go first. As a neighbor to this property, I live on Baldwin Avenue and
33 I have met Marty. I have stayed at this property. I see it as a very well-run operation, a lot of
34 parking. They have recycle going on. I approve of this.

35
36 Mr. Carnicelli: Great. Thank you. Anybody else? Commissioner La Costa.

37
38 Ms. La Costa: Thank you. I seconded the motion because I feel the same way as Commissioner
39 Freitas. My question is when I read through this I didn't see the specific conditions that we usually
40 put on short-term rentals because this is a STR and a B&B hybrid kind of thing, it doesn't say
41 anything about the ocean safety or other things so I'm just wondering why that's the case.

42
43 Mr. Carnicelli: Would you like to amend the motion then?

44
45 Ms. La Costa: Can I? Should I have him amend the motion?

46

1 Mr. Carnicelli: Well, you can recommend a friendly amendment to the main motion.

2
3 Ms. La Costa: Okay, I make a motion to amend the terms under which the STR and the B&B are
4 taken care of under the SUP to add the ocean...the language what we usually do for the ocean
5 care of the aina.

6
7 Ms. Pali: You want him to read it into the record?

8
9 Ms. La Costa: s'il vous plait.

10
11 Mr. Wollenhaupt: Now I should be able to say it in French. The applicant shall ensure that all
12 guests are educated about Maui Nui's history and culture and about potential detrimental impacts
13 to natural and cultural resources particularly to the coastal environment and near shore waters.
14 Evidence of such an education program shall be provided to the Planning Director, well prior to
15 operation. It might be evidence prior to the adoption of the ordinance 'cause we're in usual
16 situation of the operate.

17
18 Mr. Carnicelli: Commissioner Freitas are you okay with that amendment?

19
20 Mr. Wollenhaupt: Yes.

21
22 Mr. Carnicelli: Are you okay with it?

23
24 Ms. La Costa: I am, thank you.

25
26 Mr. Carnicelli: So that is a friendly amendment. Any further discussion? Director.

27
28 Ms. McLean: Thank you Chair. The motion on the floor is to recommend approval of the
29 Conditional Permit to the County Council as recommended by Staff and to approve the State
30 Special Permit as recommended by Staff with the addition of the natural and cultural education
31 condition.

32
33 Mr. Carnicelli: All those in favor please raise your hand. That is six ayes. Opposed, seeing none,
34 one abstention that is seven. Congratulations. Good luck up at County Council.

35
36 **It was moved by Mr. Freitas, seconded by Ms. La Costa, then unanimously**

37
38
39 **VOTED: To Recommend Approval of the Conditional Permit to the County**
40 **Council as Recommended by the Department and to Approve the**
41 **State Land Use Special Permit as Recommended by the Department**
42 **with the Addition of the Natural and Cultural Education Condition.**

43
44 **(Assenting – K. Freitas, P. D. La Costa, D. Thompson, K. Pali,**
45 **C. Tackett, S. Castro, Abstained – K. Robinson)**
46 **(Absent – T. Gomes)**

1
2
3
4
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7
8
9

Respectfully Submitted by,

CAROLYN TAKAYAMA-CORDEN
Secretary to Boards and Commissions II

Application for Amendment to Permit Terms, Conditions & Time Stipulation

Please print legibly or type in the information below.

PROPERTY ADDRESS / PROJECT INFORMATION

Name of Project: (If project name is not provided, applicants name will be used) Banyan Tree CP 2000/0012
Tax Map Key No: (2) 2-4-002:002 Total Lot Area: 2.102 acres
Physical Address / Location of Project: 3265 Baldwin Avenue, Makawao, Hawaii
Additional Location Information: _____

DESCRIPTION OF PROPOSED ACTIVITY OR DEVELOPMENT

Written description of the proposed action shall include, but not be limited to: use, length, width, height, depth, building material(s), and statement of objectives of the proposed action. Attach additional sheets, if needed:

Describe the Existing Use: Banyan Tree Bed & Breakfast

Describe the Proposed Use: Banyan Tree Bed & Breakfast


Include a description of all proposed ground altering activities (e.g., area of disturbance, quantity of fill, depth of excavation, etc.).

Valuation*: \$ 0 Building Permit Application No: (if applicable) N/A

*Total cost or fair market value as estimated by an architect, engineer, or contractor licensed by the Department of Commerce and Consumer Affairs, State of Hawaii; or, by the administrator of Department of Public Works, Development Services Administration.

CONTACT INFORMATION

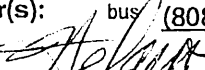
APPLICANT INFORMATION

Applicant's Name(s): Helaina Di Martino Email: lainabanyantree@gmail.com
Mailing Address: 3265 Baldwin Avenue, Makawao, Hawaii 96768
Phone Number(s): bus (808) 866-6225 hm _____ cell _____ fax _____
Signature(s):  Date: 6/13/19

CONSULTANT INFORMATION

Contact Name(s): Chris Hart & Partners, Inc. (Raymond Cabebe) Email: rcabebe@chpmaui.com
Mailing Address: 115 N. Market Street, Wailuku, Hawaii 96793
Phone Number(s): bus (808) 242-1955 hm _____ cell _____ fax (808) 242-1956
Signature(s): _____ Date: _____

OWNER INFORMATION

Owner's Name(s): Helaina Di Martino Email: lainabanyantree@gmail.com
Mailing Address: 3265 Baldwin Avenue, Makawao, Hawaii 96768
Phone Number(s): bus (808) 866-6225 hm _____ cell _____ fax _____
Signature(s):  Date: 6/13/19

DATE, 2019 6/17

Ms. Michele McLean, Director
Department of Planning
County of Maui
2200 Main Street
One Main Plaza, Suite 315
Wailuku, Maui, Hawaii 96793

AND

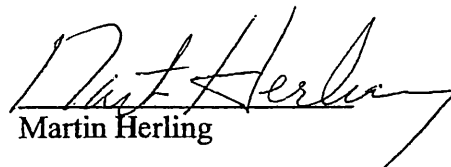
Other Governmental Officials

Re: Applications for the Extension and Transfer of Conditional Permit (CP 2000/0012) and Special Use Permit (SUP2 2000/0007), for continued use and operation of the Banyan Tree Bed and Breakfast at 3265 Baldwin Avenue, Makawao, Hawaii at TMK: (2) 2-4-002:002


Dear Ms. McLean and Other Government Officials:

As the previous owner of the property and permits (CP 2000/0012) and (SUP2 2000/0007), I hereby authorize Helaina DiMartino to sign as the Applicant for all necessary permits and approvals, including but not limited to the Extension and Transfer of (CP 2000/0012) and (SUP2 2000/0007), for continued use and operation of the Banyan Tree Bed and Breakfast at 3265 Baldwin Avenue, Makawao, Hawaii at TMK: (2) 2-4-002:002.

Very truly yours,

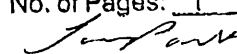

Martin Herling

Cc. Mr. David Sereda, President, Chris Hart & Partners, Inc.

Subscribed and sworn to before me this 17th day of June, 2019


Notary Public, Second Judicial Circuit
State of Hawaii Sandra Park
My commission expires: 2-22-21

State of Hawaii
County of Maui NOTARY PUBLIC CERTIFICATION
Sandra Park Second Judicial Circuit
Doc. Description: Re: Applications for
the Extension and Transfer

No. of Pages: 1 Date of Doc. 6-17-19

Notary Signature 6-17-19
Date

LS