

## PSLU Committee

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**From:** Melody Andrion <Melody.Andrion@co.maui.hi.us>  
**Sent:** Tuesday, September 7, 2021 8:41 AM  
**To:** PSLU Committee  
**Cc:** allison.stewart@mauicounty.us; Richard E. Mitchell  
**Subject:** PSLU-61 Transfer and Time Extension Conditional Permit Banyan TreeBed and Breakfast  
**Attachments:** PSLU-61 2021-09-03 RAFL Closing CP Banyan Tree B&B.pdf

Attached e-signed/approved by Jennifer Oana for Michael Hopper on 09/03/2021 ordinance regarding the subject matter. Thanks!

For posting on the September 17<sup>th</sup> Council meeting agenda.

**NOTICE:** The information in this transmittal (including attachments, if any) is privileged and confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this transmittal is prohibited except by or on behalf of, the intended recipient. If you have received this transmittal in error, please notify me immediately by reply email and destroy all copies of the transmittal. Thank you.

# REQUEST FOR LEGAL SERVICES

**RECEIVED**

By Dept. of the Corporation Counsel at 9:40 am, Sep 01, 2021

**Date:** August 31, 2021

**From:** Tamara Paltin, Chair

Planning and Sustainable Land Use Committee

TRANSMITTAL


**Memo to:** DEPARTMENT OF THE CORPORATION COUNSEL  
Attention: Jennifer Oana, Esq.

**Subject:** TRANSFER AND TIME EXTENSION OF A CONDITIONAL PERMIT FOR THE BANYAN TREE BED AND BREAKFAST AT 3265 BALDWIN AVENUE (MAKAWAO) (PSLU-61)

**Background Data:** Please see the attached bill recommended by the PSLU Committee at its meeting of August 19, 2021, for passage on first reading, incorporating nonsubstantive revisions. Please sign if the bill is legally defensible. If the bill is not legally defensible, please provide a public memo explaining your reasons. Confidential legal advice is not sought. Please submit the response to [pslu.committee@mauicounty.us](mailto:pslu.committee@mauicounty.us) with reference to PSLU-61.

**Work Requested:** ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

|  |   |
|--|---|
| Requestor's signature<br><br>Tamara Paltin | Contact Person<br>Alison Stewart or Richard Mitchell<br>(Telephone Extension: 7661 or 7662, respectively) |
|--|---|

☐ ROUTINE (WITHIN 15 WORKING DAYS)

☐ RUSH (WITHIN 5 WORKING DAYS)

☐ PRIORITY (WITHIN 10 WORKING DAYS)

☐ URGENT (WITHIN 3 WORKING DAYS)

☒ SPECIFY DUE DATE (IF IMPOSED BY SPECIFIC CIRCUMSTANCES):

September 8, 2021

REASON: For posting on the September 17, 2021 Council meeting agenda.

## FOR CORPORATION COUNSEL'S RESPONSE

reference LF2020-0231

|                  |                          |         |
|------------------|--------------------------|---------|
| ASSIGNED TO: JMO | ASSIGNMENT NO. 2021-0016 | BY: maa |
|------------------|--------------------------|---------|

TO REQUESTOR: ☒ APPROVED ☐ DISAPPROVED ☐ OTHER (SEE COMMENTS BELOW)

☐ RETURNING--PLEASE EXPAND AND PROVIDE DETAILS REGARDING ITEMS AS NOTED

COMMENTS (NOTE - THIS SECTION NOT TO BE USED FOR LEGAL ADVICE):

Section 2, Condition 1, was revised because it did not make sense. Please review the revisions ("if" to "except"; left in "may be" and deleted "is".) Call if you have questions.

DEPARTMENT OF THE CORPORATION COUNSEL

Date 9/3/021

By /s/ J.O.

pslu:ltr:061acc01:ans

(Rev. 7/03)

Attachment

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

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

A BILL FOR AN ORDINANCE AMENDING ORDINANCE 3377,  
TO AMEND CONDITIONS, GRANT A TIME EXTENSION,  
AND 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,  
TAX MAP KEY (2) 2-4-002:002  
HAMAKUAPOKO – MAKAWAO, MAUI, HAWAII

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

SECTION 1. Ordinance 3377 (2006) is amended in Section 1 to read as follows:

“SECTION 1. [Pursuant to] In accordance with 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 3377 (2006) is amended in 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] is valid for a period of [five (5) years] five years from the effective date of this amended ordinance[; provided, that] , except an extension of this Conditional Permit beyond this five-year period may be granted [pursuant to] in accordance with Section 19.40.090, Maui County Code.

2. That the Conditional Permit [shall be] is nontransferable unless the Council approves a transfer by ordinance.

3. That [Marty Herling] Helaina DiMartino [shall] must exercise reasonable due care [as] to third parties [with respect to] in all areas affected by [subject] the Conditional Permit, and [shall] must 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)] \$1,000,000 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] 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] her permitted rights; and (2) all actions, suits, damages and claims [by whomsoever] brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming the County of Maui as [a named] an additional insured [shall] must 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] must 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 accordingly may result in the revocation of the Conditional Permit [pursuant to] under Section 19.40.080 [of the] Maui County Code.

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

6. That full compliance with the conditions of the Land Use Commission Special Use Permit (SUP2 2000/0007) [shall] must 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.]7. That [Marty Herling] Helaina DiMartino [shall] must 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.]

8. That the Banyan Tree Bed & Breakfast must not operate during any times that all owners-proprietors are away overnight.

9. That the owners-proprietors must be residents of the County and must reside, on a full-time basis, on the same lot being used as the transient vacation rental.”

SECTION 3. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 4. This Ordinance takes effect on approval.

APPROVED AS TO FORM  
AND LEGALITY:

for

\_\_\_\_\_  
MICHAEL J. HOPPER  
Deputy Corporation Counsel  
County of Maui

LF2021-0016/2020-0231  
PSLU-61 2021-09-03 Ord Am CP Banyan Tree  
pslu:misc:061abill01:wal