

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

September 17, 2021

**Committee**  
**Report No. \_\_\_\_\_**

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

Chair and Members:

Your Planning and Sustainable Land Use Committee, having met on August 19, 2021, makes reference to County Communication 18-34, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING ORDINANCE NO. 4295 (2016), GRANTING MAUI DRAGON FRUIT FARM LLC A CONDITIONAL PERMIT TO CONDUCT AGRICULTURAL RELATED ACTIVITIES, SELL NON-AGRICULTURAL RELATED ITEMS AND AGRICULTURAL PRODUCTS NOT GROWN ON THE PROPERTY, AND TO CONDUCT CERTAIN SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT AND TO ALLOW THE TRANSIENT VACATION RENTAL (TVR) OF A TWO BEDROOM FARM DWELLING IN THE COUNTY AND STATE AGRICULTURAL DISTRICTS ON AN APPROXIMATELY 3.0 ACRE PORTION OF A 27.528 ACRE PARCEL OF LAND, LOCATED AT 833 PUNAKEA LOOP, LAHAINA, MAUI, HAWAII."

The purpose of the proposed bill is to grant a Conditional Permit to Lawrence and Crystal Schmitt of Maui Dragon Fruit Farm LLC, to conduct agricultural related activities, sell non-agricultural related items and agricultural products not grown on the property, conduct certain special events, and allow transient vacation rental ("TVR") use of a two-bedroom farm dwelling on a three-acre portion of the property, identified for real property tax purposes as tax map key (2) 4-7-001:044 (por.), located at 833 Punakea Loop, Lahaina, Maui, Hawaii.

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

By correspondence dated August 13, 2021, the Chair of your Committee transmitted a revised proposed bill entitled "A BILL FOR AN

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ORDINANCE AMENDING ORDINANCE 4295, GRANTING MAUI DRAGON FRUIT FARM LLC A CONDITIONAL PERMIT TO CONDUCT AGRICULTURAL RELATED ACTIVITIES, SELL NON-AGRICULTURAL RELATED ITEMS AND AGRICULTURAL PRODUCTS NOT GROWN ON THE PROPERTY, AND TO CONDUCT CERTAIN SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT, FOR PROPERTY SITUATED AT 833 PUNAKEA LOOP, LAHAINA, MAUI, HAWAII.”

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

Your Committee discussed the matter with the applicant, who said that Maui Dragon Fruit Farm LLC is a 27-acre USDA-certified organic farm established in 2009. In addition to farming, she said their operations include retail product sales, commercial agriculture structures, special events, and farm tours with Aqua-Ball rides, which provide supplemental income streams to help sustain farming operations and counter agricultural losses.

The Planning Director said the 400-foot zipline was a permitted accessory use on the property, as noted in the Department’s correspondence to the applicant dated October 15, 2010. The Director requested the Conditional Permit be amended to specify zipline activities as a permitted accessory use, which your Committee did not support.

Your Committee noted the hours of operation for the zipline and other commercial activities on the property are 9:00 a.m. to 12:00 p.m., Monday through Friday, and closed on weekends except Saturdays during the summer.

Your Committee was advised that because the parcel is less than 50 acres in size, it did not qualify for a zipline use extension without first obtaining a Conditional Permit under Section 8 of Ordinance 5238 (2021). Ordinance 5238 (2021) further states: “the owner or operator of the

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commercial zipline or canopy tour must either obtain a Conditional Permit or cease operation of the nonconforming use” by August 13, 2022, one year from the effective date of the Ordinance.

Your Committee agreed to further amend the revised proposed bill to align the expiration date of the Conditional Permit with the expiration date of the Special Use Permit, which received an extension in 2020, to March 4, 2025.

Your Committee voted 7-0 to recommend passage of the revised proposed bill on first reading and filing of the communication. Committee Chair Paltin, Vice-Chair King, and members Johnson, Lee, Rawlins-Fernandez, Sinenci, and Sugimura voted “aye.” Committee members Kama and Molina were excused.

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating your Committee’s revisions and nonsubstantive revisions.

Your Planning and Sustainable Land Use Committee  
**RECOMMENDS** the following:

1. That Bill \_\_\_\_\_ (2021), as revised herein and attached hereto, entitled “A BILL FOR AN ORDINANCE AMENDING ORDINANCE 4295, GRANTING MAUI DRAGON FRUIT FARM LLC A CONDITIONAL PERMIT TO CONDUCT AGRICULTURAL RELATED ACTIVITIES, SELL NON-AGRICULTURAL RELATED ITEMS AND AGRICULTURAL PRODUCTS NOT GROWN ON THE PROPERTY, AND TO CONDUCT CERTAIN SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT, FOR PROPERTY SITUATED AT 833 PUNAKEA LOOP, LAHAINA, MAUI, HAWAII,” be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 18-34 be FILED.

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



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TAMARA PALTIN, Chair

pslu:cr:21017aa:ans

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

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

A BILL FOR AN ORDINANCE AMENDING ORDINANCE 4295, GRANTING MAUI DRAGON FRUIT FARM LLC A CONDITIONAL PERMIT TO CONDUCT AGRICULTURAL RELATED ACTIVITIES, SELL NON-AGRICULTURAL RELATED ITEMS AND AGRICULTURAL PRODUCTS NOT GROWN ON THE PROPERTY, AND TO CONDUCT CERTAIN SPECIAL EVENTS WITHIN THE COUNTY AGRICULTURAL DISTRICT, FOR PROPERTY SITUATED AT 833 PUNAKEA LOOP, LAHAINA, MAUI, HAWAII

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

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

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

1. That full compliance with all applicable governmental requirements [shall] must be rendered in a timely manner.
2. That the Conditional Permit [shall be] is valid [for a period of two years from the effective date of this ordinance; provided that, notwithstanding] until March 4, 2025 and, regardless of Section 19.40.090(C), Maui County Code, only the Council may grant an extension of this Conditional Permit beyond [this two-year period] March 4, 2025, provided Maui Dragon Fruit Farm LLC complies with the application requirements of Section [19.04.090(A)] 19.40.090(A), Maui County Code, and the notice requirements of Section [19.04.090(B)] 19.40.090(B), Maui County Code.
3. That the Conditional Permit [shall be] is nontransferable unless the Council approves the transfer by ordinance.

4. That Maui Dragon Fruit Farm LLC [shall] must exercise reasonable due care [as] to third parties [with respect to] in all areas affected by [this subject] the Conditional Permit, and [shall] must procure at its own cost and expense[,] and [shall] maintain during the entire period of this Conditional Permit, a policy or policies of comprehensive liability insurance in the minimum amount of \$1,000,000 per occurrence and \$3,000,000 in the aggregate naming the County of Maui as an additional insured, insuring and defending Maui Dragon Fruit Farm LLC and the County of Maui against any and all claims or demands for property damage, personal injury, [and/or] or death arising out of this Conditional Permit, including[, but not limited to]: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Maui Dragon Fruit Farm LLC of [said] its permitted rights; and (2) all actions, suits, damages and claims [by whomsoever] brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming the County of Maui as an additional insured [shall] must be submitted to the Department of Planning within ninety calendar days from the effective date of this ordinance.
5. That Maui Dragon Fruit Farm LLC [shall] must develop and use the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to [so] develop the property accordingly may result in the revocation of the Conditional Permit [pursuant to] under Section 19.40.080, Maui County Code.
6. That the gift shop [shall] must open no earlier than 9:00 a.m. and [shall] must close by 8:00 p.m.
7. That special events [shall] must be limited to fifty guests and be limited to two times per calendar month [; provided], except that one special local agriculture event may be held once a year with traffic and safety measures as recommended by the Maui Police Department to be provided.

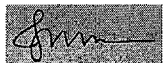
8. That amplified sound is prohibited.
9. That an owner of Maui Dragon Fruit Farm LLC or a professional event planner [shall] must be required to be present during all events and same-day event clean-up. If a professional planner is used, then an owner of Maui Dragon Fruit Farm LLC [shall] must be accessible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

19. That review and approval are required by the Fire Prevention Bureau for events open to the public with fifty or more people in attendance, or when temporary tents or canopies in excess of 700 square feet in size are utilized, or when open flames, such as lanterns or bonfires or other potential fire hazards will be used.
20. That a compliance report [shall] must be submitted by Maui Dragon Fruit Farm LLC and approved by the Department of Planning prior to starting operations.
21. That upon renewal of this Conditional Permit, Maui Dragon Fruit Farm LLC [shall] must submit a list of all events including the dates, times, type, and number of attendees.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This Ordinance takes effect on approval.

APPROVED AS TO FORM AND LEGALITY:

 2021.09.07  
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for

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MICHAEL J. HOPPER  
Department of the Corporation Counsel  
County of Maui

pslu:misc:017abil02:wal  
LF2021-0016/2015-4485  
PSLU-17 2021-09-01 Ord Amd CP Maui Dragon Fruit Farm LLC