

REQUEST FOR LEGAL SERVICES

Date: August 24, 2021
From: Tamara Paltin, Chair
Planning and Sustainable Land Use Committee

TRANSMITTAL


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

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

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 with reference to PSLU-17.

Work Requested: ☒ FOR APPROVAL AS TO FORM AND LEGALITY

☐ OTHER:

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

☐ 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

ASSIGNED TO:	ASSIGNMENT NO.	BY:
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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): _____

DEPARTMENT OF THE CORPORATION COUNSEL

Date _____

By _____

(Rev. 7/03)

pslu:ltr:017acc01:ans

Attachment

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~~] is valid until March 4, 2025 [~~for a period of two years from the effective date of this ordinance; provided that, notwithstanding~~] 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), Maui County Code, and the notice requirements of Section 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 death arising out of this Conditional Permit, including[, but not limited to]: (1) claims from any accident in connection with the permitted use, or occasioned by any act or nuisance made or suffered in connection with the permitted use in the exercise by Maui Dragon Fruit Farm LLC of [said] its permitted rights; and (2) all actions, suits, damages and claims [by whomsoever] brought or made by reason of the nonobservance or nonperformance of any of the terms and conditions of this Conditional Permit. A copy of the certificate of insurance naming the County of Maui as an additional insured [shall] must be submitted to the Department of Planning within ninety calendar days from the effective date of this ordinance.
5. That Maui Dragon Fruit Farm LLC [shall] must develop and use the property in substantial compliance with the representations made to the Maui County Council in obtaining the Conditional Permit. Failure to [so] develop the property accordingly may result in the revocation of the Conditional Permit [pursuant to] under Section 19.40.080, Maui County Code.
6. That the gift shop [shall] must open no earlier than 9:00 a.m. and [shall] must close by 8:00 p.m.
7. That special events [shall] must be limited to fifty guests and be limited to two times per calendar month [; provided, that], except 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 [(1)] 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 is required by the Fire Prevention Bureau for events open to the public with fifty or more people in attendance [and/] 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:

Department of the Corporation Counsel
County of Maui

pslu:misc:017abill02:wal