

COUNCIL OF THE COUNTY OF MAUI
LAND USE COMMITTEE

November 2, 2001

Committee
Report No.

01-214

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

Chair and Members:

Your Land Use Committee, having met on October 18, 2001, makes reference to County Communication No. 01-253, from the Planning Director, transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO KENN AND ANJULE DESURE TO OPERATE THE TWO-BEDROOM MAUI OCEAN BREEZES BED AND BREAKFAST WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT 240 NORTH HOLOKAI ROAD, HAIKU, MAUI, HAWAII".

The purpose of the proposed bill is to grant Kenn and Anjule DeSure a Conditional Permit to operate the two-bedroom Maui Ocean Breezes Bed and Breakfast on approximately 2.212 acres of land at 240 North Holokai Road, Ha`iku, Maui (TMK: 2-8-004:104).

Your Committee notes that the Maui Planning Commission held a public hearing and meeting on the Conditional Permit application on June 12, 2001. After reviewing the findings presented in the documents entitled "MAUI PLANNING DEPARTMENT'S RECOMMENDATION TO THE MAUI PLANNING COMMISSION JUNE 12, 2001 MEETING" and "MAUI PLANNING DEPARTMENT'S REPORT TO THE MAUI PLANNING COMMISSION JUNE 12, 2001 MEETING", the Commission voted to recommend approval of the request for a Conditional Permit subject to the following conditions:

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 permit beyond this one-year period may be granted pursuant to Section 19.40.090 of the Maui County Code.
2. That the Conditional Permit shall be nontransferable.

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3. That the applicant, their successors, and permitted assigns shall exercise reasonable due care as to third parties with respect to all areas affected by the subject Conditional Permit and shall procure at 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 (\$1,000,000.00) 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 the 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 nonobservance or nonperformance of any of the terms and conditions of the Conditional Permit. A copy of a policy naming County of Maui as an additional named insured shall be submitted to the Department of Planning within ninety (90) calendar days from the date of approval of the Conditional Permit.

Your Committee further notes that the recommendation of the Maui Planning Commission was based upon the following conclusions:

1. There is no evidence that the ongoing use will be significantly detrimental to the public interest, convenience, and welfare.
2. The proposed use will be in harmony with the area.

At its meeting, your Committee met with the Deputy Planning Director; a Deputy Corporation Counsel; and Anjule DeSure, one of the co-applicants.

Ms. DeSure informed your Committee that when she and her husband, Kenn, purchased the subject property in 1999 it was already functioning as a vacation-rental operation. The DeSures use the subject property for their primary residence and as a vacation-rental operation. They decided to apply for a

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Conditional Permit to authorize the continued use of the subject property for a vacation-rental operation even though the County had not threatened immediate enforcement action.

Your Committee commended the applicants for applying for a Conditional Permit. Your Committee also noted that no complaints had been received about the vacation-rental operation from surrounding residents and that complaints about noise and other potential nuisances were unlikely because, among other reasons, the subject property is in a relatively remote area. Noting the difficulty and expense in applying for a Conditional Permit, your Committee voted to revise the proposed bill by providing that: (1) the Conditional Permit shall be valid for five years (extending the one-year duration recommended by the Maui Planning Commission); and (2) full compliance with all applicable governmental requirements shall be rendered.

Your Committee voted to recommend passage of the proposed bill, as revised, and filing of the communication.

Your Committee is in receipt of a revised proposed bill, incorporating the revisions approved by your Committee.

Your Land Use Committee **RECOMMENDS** the following:

1. That Bill No. _____ (2001), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE GRANTING A CONDITIONAL PERMIT TO KENN AND ANJULE DESURE TO OPERATE THE TWO-BEDROOM MAUI OCEAN BREEZES BED AND BREAKFAST WITHIN THE COUNTY AGRICULTURAL DISTRICT FOR PROPERTY SITUATED AT 240 NORTH HOLOKAI ROAD, HAIKU, MAUI, HAWAII", PASS FIRST READING and BE ORDERED TO PRINT; and
2. That County Communication No. 01-253 be FILED.

Adoption of this report is respectfully requested.

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